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ADVISORY COMMITTEE ON CONFEDERATION

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M E E T I N G

held at

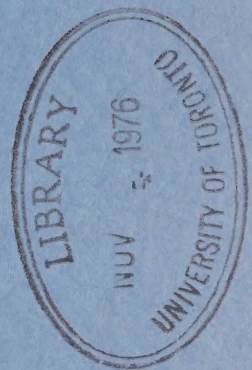
950 Yonge Street, TORONTO

and

Cabinet Office Board Room,  
Parliament Buildings, TORONTO

on

FRIDAY, NOVEMBER 18, 1966



VERBATIM REPORT OF PROCEEDINGS

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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

--- Meeting held at 950 Yonge Street (a.m.)

and in the Cabinet Office Board Room,

Parliament Buildings, Toronto, (p.m.)

on Friday, November 18, 1966.

PRESENT:

Cabinet Committee (Afternoon session)

Hon. J.P. Robarts, Q.C.	Prime Minister
Hon. A.A. Wishart, Q.C.	Attorney General
Hon. J.N. Allen	Provincial Treasurer

Advisory Committee

Mr. I. Macdonald (Chairman)

Prof. A. Brady

Prof. J. Conway

Prof. D. Creighton (p.m.)

Dean R. Dillon

Dr. E. Forsey

Prof. P.W. Fox

Dean W.R. Lederman

Mr. C.R. Magone

Prof. R.C. McIvor

Prof. E. McWhinney

Prof. J. Meisel

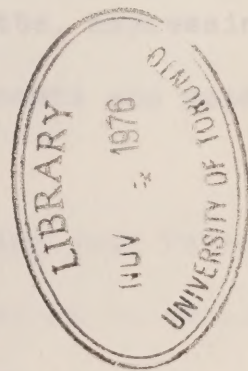
Prof. T. Symons

Mr. R.N. Seguin

Mr. D. Stevenson)

) Joint Secretaries

Mr. R. Farrell )









--- At 9.45 a.m.

THE CHAIRMAN: I think we had better get started. First of all, I have regrets from Mr. Perry who will be away today. Professor Creighton will be missing in the morning, but will join us at lunch and for the afternoon. Professor Meisel is coming in by train this morning and should be here at the meeting by 10.15.

That is all that are accounted for to the moment, except for Father Matte. Following our last meeting and by your instruction, I wrote to Father Matte and have received a letter from his secretary which I might read, as follows:

"We have received your letter addressed to Father Matte, expressing your Committee's sentiments and good wishes.

"I am forwarding your letter to Father Matte today as he is still convalescing in Montreal.

"Father Matte's second heart attack has taxed his health considerably. However, it is quite possible that he may be back with us by the end of the year. We need him.

"May we once again take this opportunity to thank you and your Committee in Father Matte's name for







"the good wishes you have thoughtfully  
"expressed."

The other matters of business, following our last meeting I have already written to the Commissioners of the B B Commission in the spirit in which it was suggested, that any studies having bearing on some of the problems we discussed last time, if these could be made available to us, to our staff on a confidential basis, we would find this of some benefit. As yet there is no reply to that request.

Then as to our proposed meeting in Kingston, perhaps I should ask Mr. Stevenson or Mr. Beer from the staff to make any other comments about this, but briefly arrangements have been confirmed with Professor Burns in Kingston for the weekend of January 13th to 15th, that is, from the Friday evening to the Sunday evening.

I have also informed Mr. Morin in Quebec City of the general plans and what dates Mr. Beer has made with Mr. Burns in Kingston to discuss the detail. We presently have a draft list of proposed names for invitation, and will be working on an agenda and other arrangements.

The plan will be to stay in a motel in the neighbourhood of the University, and we will arrange transportation to the University where the meetings will take place. There will be a







reception and a dinner tendered by the University on the Saturday and so on.

Charles, or Don, do you have anything?

MR. SEGUIN: Is it Friday morning or Friday evening?

THE CHAIRMAN: Friday evening. I think that is the idea, to get in and have a reception Friday evening.

MR. BEER: Yes, for a get-together. Trains arrive roughly between 7.30 and 8.00 from Montreal and Toronto.

DR. FORSEY: When does this take place?

THE CHAIRMAN: Friday, and then we will get down to business on the Saturday and Sunday.

PROF. FOX: There is an interesting little point here that we mentioned at a policy research sub-committee meeting some time ago. Shall I raise it?

THE CHAIRMAN: Surely.

PROF. FOX: We have not had a meeting of that committee since the plans have been advanced to this point, so I raise it now merely for the consideration of all members of the Committee.

I think it was I who suggested at that meeting that we should not expect to be paid our per diem for this meeting; that it is not a meeting of this Committee; that it is a voluntary meeting of persons, and we go on our own and that is that.

I presume the expenses there are looked





after by the Burns arrangement. We are not paying for our motel, but to get there we look after our own transportation, and we do not expect a per diem.

I merely raise that because I do not think it has been mentioned to the full Committee, and perhaps we should discuss it.

DR. FORSEY: I agree heartily.

THE CHAIRMAN: We have not refined things to that point, but I certainly agree.

The invitation will come from Professor Burns, although the agenda and the invitations will be largely our doing here.

It will not be a meeting of the Committee as such; it will be a meeting as you suggest, Paul.

Certainly unless there are any other comments, I think that your suggestion is quite appropriate, that there should not be an honorarium on the day.

On the other hand, I think there is adequate provision for looking after the expenses of staying there, and I think perhaps even the transportation costs for any members who are not so placed, such as civil servants, in terms of having their travel provided for. I think we will draw the line at expenses.

DR. FORSEY: Does that apply to trade union





civil servants? I don't want it to.

THE CHAIRMAN: Bureaucrats is the word.

DR. FORSEY: I do not want it to.

THE CHAIRMAN: I think we will not worry about the expenses. There are going to be funds to look after the whole thing.

DR. FORSEY: I shall stand on my dignity as a visiting professor.

PROF. McWHINNEY: Your preliminary reaction from Quebec was a very happy one, was it?

THE CHAIRMAN: Very pleased about this. I think within the next couple of weeks, as we get on with the job of refining the programme, would you think, Paul, we should have a meeting of our sub-committee?

PROF. FOX: Might be a good idea.

THE CHAIRMAN: I think we should.

PROF. FOX: I think there will be some other matters perhaps we should meet to discuss.

THE CHAIRMAN: All right. If there is nothing else in that, we have a final administrative matter. We have a little local problem on December 16th, as we did last year. Isn't that the day of the Christmas party festivities here? Christmas is something I usually start thinking about on December 24th, but December 16th seems to be the appointed day in this quarter.

PROF. FOX: They think ahead in the civil





service, you know.

THE CHAIRMAN: On these matters, yes. I do think we want to meet, as suggested, and we should meet in December. I hate to get into this problem. I think it is very important we meet on this occasion before this January meeting in Kingston. I hate to get into these difficulties of the scramble for dates again, but I am wondering about the possibility of holding the meeting earlier the following week. I do not know when the academic term ceases, and how this might complicate teaching arrangements, but perhaps the Tuesday or Wednesday of the following week. Would people be going away or be inconvenienced by that, as far as you know? I was thinking of the 20th or 21st.

PROF. FOX: I don't know when lectures finish at Toronto. Do you know?

PROF. BRADY: I haven't any idea.

DR. FORSEY: We finish absurdly early, on the 10th.

PROF. FOX: I suppose if you have the quality you can quit earlier.

DR. FORSEY: Stop looking down your nose.

PROF. McIVOR: I think we struggle along to the middle of the week before Christmas.

PROF. FOX: I have the idea it is very close to Christmas.





DR. FORSEY: I think we are going to do an examination in the following week or something of that kind.

THE CHAIRMAN: This is always a problem. You have not your diaries here. I wonder if you would be agreeable to my sending out the first of the week a brief memo suggesting a couple of days in that week, asking whether you are free on one day or the other or both?

PROF. FOX: Does your party last all day?

THE CHAIRMAN: It starts about noon. On that day we want to bring down Professor Rowat, you know, to have a real go on this Capital District question, and other things.

PROF. McWHINNEY: Can you make it Thursday?

MR. SEGUIN: How about Friday the 9th? Much better than the week before Christmas.

DR. FORSEY: I would think so.

MR. SEGUIN: There are a lot of other things, cocktail parties, to attend to.

THE CHAIRMAN: I think the 9th might be a good day to meet as a way of being uninvolved, for me at least, in the process of this Department being transported from here to the new Treasury Building on that day.

PROF. FOX: On that day?

THE CHAIRMAN: On that very day.





MR. STEVENSON: I would be very surprised if our deadlines are met.

MR. SEGUIN: Well, the 15th.

THE CHAIRMAN: I don't know whether we shall find ourselves in the moving van that day either.

DR. FORSEY: We might all meet in the moving van; give us some of this dynamism that hungry journalists have been talking about.

THE CHAIRMAN: Is the Thursday a good day?

DEAN LEDERMAN: Thursday the 15th?

THE CHAIRMAN: Is it difficult for the teaching members?

PROF. FOX: You will always encounter people who will have lectures that day. I think, like Craig, we do not terminate until the night of the 21st.

DEAN LEDERMAN: That depends upon what Professor Rowat would give us as a date.

THE CHAIRMAN: There are all these things to be considered, and we will have to work that out next week. That is the only way to do it really. We may come up with the 16th.

DEAN LEDERMAN: As far as lectures are concerned, one often has to shift them or double them up anyway.

THE CHAIRMAN: We will try and settle this





next week as well as we can.

PROF. McIVOR: Perhaps the Christmas party can be deferred a week or two.

THE CHAIRMAN: Two weeks might even be better.

I thought I might try and sum up one or two observations about the recent Federal-Provincial Conference. As you recall, we spent the Friday preceding that memorable week, discussing a number of questions of principle which seemed to become rather academic in the harsh glow of political expediency.

The week was a strenuous one in a number of respects, and a fairly intense week. I think the main points I would make are these.

Perhaps it was unfortunate, first of all, that the particular question of education was superimposed on the broader question of Federal-Provincial financial arrangements; the Federal-Provincial financial arrangements having been the climax of a long period of discussion and investigation, whereas the matter of education, although it is something there has certainly been plenty of discussion about, was clearly one in which there was not the normal degree of preparation or consultation. This got the week off to a troubled start in terms of attitudes and feelings between the Federal Government and the provinces. There



was simply too much fact and too much new detailed material to be absorbed quickly by a political forum of that kind. As a result, by the time the cross-examinations and the recriminations of the first two days had subsided, the fat was really in the fire in terms of the atmosphere of the discussions.

Within the education business itself, a further complication was the fact that the things that were to be done for higher education in general, were done at the same time as the announcement of the decision not to extend or renew the vocational and technical training arrangements. All of this had the effect of telescoping these two things in the fashion that it became clear to provinces like Ontario that there was really no net financial gain in the thing. By the time we had drawn up our balance sheet, what would have been the normal extension of the vocational and training funds, plus the previous grants to universities, was more or less compensated for by the new formula for assistance to higher education. After the first two days, we found ourselves faced by a prospective net loss next year between \$7 and \$14 million.

On the Wednesday the Prime Minister of Canada announced an extension of the so-called phasing-out of capital grants for technical and vocational arrangements, which brought in another





lump sum of about \$46 million to Ontario. If one spread this out over the next couple of years, depending on which of the formulae one were speaking of, Ontario could expect to take in about \$11 to \$21 million more, say, in each of the next two years, and, after the phase-out of this grant, probably just about break even for a few years after that.

All this by way of saying, whereas, as you know, we had been faced with the Federal Government's position that there was to be no further tax-sharing; and whereas we had expected that the way in which this principle would be not compromised but that something would be still done for Ontario, would be through fairly massive support for higher education. We find that \$10 to \$20 million was scarcely massive when measured against prospective capital expenditures for Ontario universities of \$200 million next year and operating expenditures of a like amount.

So, needless to say, between the great confusion of detail - and there was a great deal of confusion because the normal process, as you know, is for officials (as the Ottawa people call themselves) or civil servants (we still call ourselves) to meet them months ahead of such political confrontation - and in a sense there was no consultation among the programme department at all, but bits and pieces of rumours coming back.





Then on the, yes, day after we met about 5.30 that day, I was called from Ottawa with a brief report what was going to be proposed on the Monday. This meant that all of the general preparations that normally go on simply did not go on in this case, and the atmosphere was pretty blue by the middle of the week.

So we came to the middle of the week to sit down to the Tax Structure Committee and the matters of wider principles in a rather cloudy atmosphere, as I have said.

The principal question was whether the results of the Tax Structure Committee study which, as you know, showed the Federal Government moving in the surplus position, provinces into increasingly heavy deficits, whether this was a fair representation of things to come, given the present economic and financial situation, and the fact that since the study had been completed the Federal Government had taken on some new financial commitments; the Minister of Finance adding that he could not be governed by this study and made that point very firmly to the Committee.

As a result, the one tangible piece of work that was the outcome of the two-year study was, in a sense, buried; and therefore one was really back to the old position of horse-trading and scrambling over the financial pie.



After some pressure from some of the provinces, notably Ontario and Manitoba, it was agreed to publish a very abbreviated form of the Tax Structure Committee data, which you have received today and which was in the newspapers at the time of the meeting.

Here I am offering more personal judgment than an observation, but my own fear is that the exercise of the Tax Structure Committee has probably been set back rather badly by this meeting, in the sense that there is quite a heavy investment by a number of people and, I think, quite a strong, growing commitment in principle by a number of the Premiers, that the Tax Structure exercise was a good one in terms of working out new principles and new guidelines; and that it was their feeling that by disregarding the basic results of this report, this had really placed a very heavy burden on the future of the Tax Structure Committee.

As far as the arrangements which were finally reached, they are a little difficult to be quite clear about. One talks about signing agreements and so on, but there is certainly no signing there; and I think if one were to try and set out in very explicit form what was agreed to, it would be very difficult to do so; but briefly, what was agreed to in the sense that the Federal Government said this is what it was willing to do, were two things.





The new equalization formula was agreed to in that sense, and the present formula for aid to higher education, which is to pay \$15 per capita or 50 per cent of operating costs of all post-secondary institutions, these were agreed to in the sense of agreement for the next five years; although the Federal Government, at the insistence of Ontario and Manitoba and several other provinces, agreed that this would all be reviewed within two years following the receipt of the Carter Commission report and other such studies, the Ontario Smith Committee and so on.

There remained certain details such as definition of "post-secondary". What are the other ones?

MR. STEVENSON: Definition of operating costs; definition of an "adult"; definition of "adult training"; the definition of eligibility for training allowances.

THE CHAIRMAN: This will be gone into by a meeting of officials. Mr. Stevenson and I and some others are going up to a meeting in Ottawa this evening to engage in a little preliminary conjecture. There is then a meeting of the Federal-Provincial officials to try and tidy up some of the details, and we hope to do what we can by way of having liberal definitions of these in our interests.





As far as the famous seventeen point offer was concerned, I think the one absolutely positive and unequivocal consequence of the meeting was the resounding "no" with which that was received. They went around the table and it was "no", "no", from all of the provinces in succession, so that was quite definite. That is the one thing that was quite definite in the week.

Now, as you know, all of this was based on a basic principle advanced by the Federal Government, that there should be strict and rigid adherence to the present constitution in terms of who did what; although there was still some interpretation done here in the sense that the Federal Government argued that they had broad responsibilities for culture, for economic policy, and for manpower training in the sense of retraining and retraining adults so that they could make a more productive contribution to the labour force and to the economy - really came under the umbrella of responsibility for economic policy.

MR. STEVENSON: Employment-oriented adult training I think was the last phrase.

THE CHAIRMAN: I was trying to avoid that unfortunate piece of jargon, Don, but you are quite right.

One or two sidelines. I think all of us were quite struck by the very responsible behaviour



of the Prime Minister of Quebec. After the announcement at the September meeting about 100, 100, 100, in terms of tax fields, I think it is proper to say that all of the Premiers of the English-speaking provinces were struck by the manner in which the Prime Minister of Quebec handled himself at the meeting. I think one of the bright things that came out of the meeting was the very good spirit that was engendered among the Premiers, perhaps as people thrown together in adversity, so to speak; but nonetheless I think this was a healthy thing and, by the same token, Mr. Johnson was clearly very taken by the reception that he had and the understanding that was shown to him by some of the other provinces.

I know that many people take a very cynical view of this and say that yes, but Mr. Johnson had not sold a dollar of a Quebec bond following his statement in September; that he has got a borrowing budget of \$600 million this year which he has now trimmed to \$500 million; that his back was very much to the wall, that he was in no position to bargain, that he was in a position where he had to be very circumspect.

I think you can take that cynical view, but I think nonetheless that there are many things said and many attitudes expressed, which may be highly promising from the point of view of the





overall relations. I think it would be really unfair to take a totally cynical view of the Quebec performance at that meeting.

As far as the future of federalism is concerned, in the Ontario statement on the Wednesday, the Prime Minister of Ontario did propose that if this were the final decision for now on fiscal matters, that we should turn our attention to the broader questions of federalism and have a series of meetings to straighten out some of these things and to discuss them.

As a result, this proposal was received very well by other provinces and particularly by Mr. Johnson. At this point there was a slight sense in the meeting, I think, that the provinces would be very - remember, this came right on the last Friday of a very harried week - that the provinces would be very happy indeed to discuss the future of Canadian federalism, and if the Federal Government cared to participate it would certainly be welcome to join in these discussions.

Now, when we meet this afternoon, I hope that you will perhaps raise this with the Prime Minister in terms of what is it we should really be doing in the next year or so to put meaning into this suggestion that there be discussions of the future of federalism, and how should it be done? This goes back to discussions we had some time ago





about whether this Committee might play a major part next year in some discussions and conferences on the future of federalism. Indeed, I think this Committee and the Government of Ontario, I would hope, might be in a position to take a fairly active part in this, and, I think this is something we should discuss with the Prime Minister.'

Finally, I think the black side of the week was the general unhappiness with which the meeting broke up; and also my own feeling that the Federal Government's principle of separation of powers to the extent that the provinces should entirely go their own way in raising their money and in organizing their own finances, is a dangerous principle at this time.

It would be all right if the provinces were minor financial entities, but it is at a time when we well know that the provinces and municipalities are accounting for 80 per cent of the capital investment and nearly two-thirds of government spending activities and trends are increasing rapidly.

It seems to me that the Federal Government does run the risk of defeating its very objective of controlling the economy, controlling finances and controlling fiscal policy in the country, by saying: "We will let you all go into things your own way". I think there is a real danger of balkanization in



that, of making it official policy in Canada, and I think there is recognition of that in many quarters.

So that I fear that in attempting to achieve one thing - and that is to recover the economic supremacy of the situation - there is a very strong danger that this flies in the face of the facts of Canadian federalism today, and that it may have unfortunate consequences, particularly since many of the provinces certainly left with the spirit: "Well, if we are to be going back and running our own affairs, we will jolly well do that, and that's that".

If with the passage of time that disappointment and that bitterness subsides and one can get back on the track, with the Tax Structure Committee embarked upon this real, co-operative fiscal and economic planning and so on, then perhaps I am being unduly pessimistic in this observation; but I think it is going to take a great effort to get the Tax Structure Committee or some equivalent back on its tracks, and that it is going to have to be a different set of tracks, because one cannot go back to a situation, I think, that broke up in quite that disarray. You have got to do it in a new form, a new way, and do certain things.

So that I am going to propose that our sub-committee on economic and fiscal policy take the





exercise now of reviewing what the Tax Structure Committee did and did not do, and what some such vehicle might do.

Take a very simple example. I have come to the conclusion that one of the problems is that it is very difficult to have the Minister of one government, the Minister of Finance of one government, chairman of that committee, because he cannot be both advocate of his own position and chairman of a committee whose terms of reference were to work out a rational proposal for Federal-Provincial financing which it finally would discuss in a plenary conference and at the political level.

Maybe this may have to become some kind of continuing tax commission or body which is going to have a very different kind of organization, staffing and all the rest. I think there are a number of very useful things that we could suggest to the Government and that might be suggested through them to the country. Perhaps I should not say more now. If there are any questions - Don, if you have any information on it that I may have overlooked ---

MR. STEVENSON: Not at this point. That really covered the wire fence very well.

PROF. FOX: Could you, on a point of clarification, Ian, just explain the relationship between the press accounts of a further abatement of four per cent in income tax and one per cent



in corporation tax for the provinces in order to finance university education? Now, you do not mention this in your summary. How does that fit with the points that he did mention?

THE CHAIRMAN: Well, the thing is this, that the Federal Government has agreed to pay \$15 per capita or 50 per cent of operating costs of higher education, of post-secondary education, to the provinces. This will be done through means of abating four points of personal income tax and one point of corporation tax to the provinces.

This will give Ontario, for example, say, \$100 million.

MR. STEVENSON: Close to \$100 million.

THE CHAIRMAN: Approximately \$100 million. Then if \$100 million is less than \$15 per capita or 50 per cent of costs (whichever formula you choose) there will be a financial transfer to make up the difference. If it is more than 15 per capita or 50 per cent of operating costs, you retain the extra.

MR. STEVENSON: That is really academic, because we know what \$15 per capita is. Next year it will be \$106 million.

As far as the 50 per cent of operating costs is concerned, what that would really come to in dollar terms depends entirely on the final agreement on definitions. This could be anywhere,





for Ontario in 1967-1968, from about \$90 up to about \$160 million. If we get Grade 13 included as post-secondary, then we would definitely be much better off with the 50 per cent option.

PROF. FOX: So then you might get into a situation in which you would have the bulk of your provincial, additional provincial revenue necessary for post-secondary education, but it is coming from sources within your own jurisdiction because you were abated this additional amount, plus a subvention from the Federal Government by way of an equalization grant to bring it up to 50 per cent or \$15 per capita.

THE CHAIRMAN: Yes.

PROF. FOX: So you cannot have complete control over the additional sum by means of your own abatement, as it were.

THE CHAIRMAN: In terms of your own budgetting.

PROF. FOX: Yes.

THE CHAIRMAN: That is right.

PROF. FOX: Is this the reason for it? I could not understand what the reason was for bringing in the four and one.

THE CHAIRMAN: Well, the basic reason was the matter of principle that the provinces had responsibility for education, and therefore they should receive, as it were, a tax transfer to give



them directly the financial resources to do those jobs, and the balancing, it was presumed, would be fairly modest balancing; that the four and one would be a fairly good indication of the cost by their measure, and this would give the provinces some financial capacity to do the things that were their own responsibility, and also to take the Federal Government completely out of direct dealings with the institutions.

PROF. FOX: Yes, and is this more or less true of all the different provinces? Would it not be that the poorer province would find that a higher percentage of their additional revenue would be coming from the equalization grant than from their own additional abatement points?

THE CHAIRMAN: Yes.

PROF. FOX: In which case they are more dependant on the Federal for the financing of the additional amount of their post-secondary education costs.

MR. STEVENSON: I think that the new equalization formula, the equalization payment of the national average yield of all revenue sources, becomes a dominant thing, and there is no arbitrary Federal decision to pay this money. What will be in a sense arbitrary, I believe, because this will be determined by a formula, will be the added adjusting payment.





PROF. FOX: I realize that.

MR. STEVENSON: To bring it up to the \$15 per capita.

PROF. FOX: I am suggesting the added adjustment might be a more significant thing, making the province dependant on the Federal Government in the case of a poorer province than a wealthy province.

MR. STEVENSON: Probably once you get the whole amount equalized to the national average, you are taking care of the major part of the transfer for even the poorest province.

PROF. SYMONS: Mr. Chairman, in addition to the immediate financial implications which are, of course, of enormous importance, I feel very concerned about the principles which seemed implicit in that arrangement and the implications for the future.

Did the conference, do you think, by agreeing in one way or other, upon this arrangement, subscribe to the view that with narrowing and very limited extensions post-secondary education is going to be interpreted as essentially a provincial responsibility?

THE CHAIRMAN: Yes.

PROF. SYMONS: If so, is this not a new view or a somewhat new view of the place of post-secondary education in constitutional



arrangements, that is a major reversal of a trend, and which has enormous implications?

While bothered, of course, about the immediate financial consequences, the implications of this confirmed view of the constitutional position of post-secondary education, is something that I think has far greater consequence.

THE CHAIRMAN: There is no doubt that there is a very strong desire to make this matter of principle very, very clear, and it throws us back, as an example, to so many of the cases where the question <sup>is</sup> / by really trying to solve a problem which is in large degree a problem for Quebec, is one doing things with respect to the rest of the country that in terms of the overall are disadvantageous?

MR. STEVENSON: Is it so? This is what we were after, of course.

THE CHAIRMAN: That is right. You remember, you did have the Federal money coming directly into the Province of Ontario and not to the institutions.

PROF. McWHINNEY: One can understand decisions being made in the context of these general financial arrangements, but in a way it seems to me, as you presented the arguments, these were probably dominant considerations and, let us say, educational policy factors were subordinated;





and the position, I suppose, in terms of strict constitutional policy, it is simply a reverting to an original constitution position that this was provincial, but the Federal Government got into it and now it is back again.

I suppose the real issue would be whether in the actual decision-making field, attention was given to, let us say, non-economic as well as economic factors.

Was it your impression, Mr. Chairman, that the full range of matters was canvassed in this?

THE CHAIRMAN: Well, I honestly don't know, Ted. We do know there was a high degree of tension right up to the very final day in the Federal Cabinet about these principles, and presumably they must have given, they certainly did give, these matters, I think, their attention; and we do know that the headquarters of the A.U.C.C. was certainly very active with the Secretary of State's Department in Ottawa, which is doing the co-ordination of the educational matters.

PROF. McWHINNEY: Did you get a strong policy recommendation from, say, the Education Department here on this point, or is this pressing you too much?

THE CHAIRMAN: No. On what point?

PROF. McWHINNEY: On the issue of in effect the control of financial grants to



universities, whether that should become provincial again.

THE CHAIRMAN: Well, yes, and the Department of University Affairs, but also government policy, in our submission, said that we believed that grants for operating and capital purposes should come directly to the province, and then the province should establish its own priorities.

The one place we made a distinction there was in research. We said we felt that there may be a direct and active federal role in research.

PROF. McWHINNEY: In making of grants to provincial institutions or institutions within provinces?

THE CHAIRMAN: For research, yes.

DEAN LEDERMAN: This would keep the National Research Council and the Canada Council Research and Medical Research Council very much in the act as federal agencies, I assume.

THE CHAIRMAN: Yes, as the overall, taking the overall view.

DEAN LEDERMAN: The other thing, one thing that worries me really, about this tying financial arrangements to operating costs: does this mean that the Federal Department of Finance is going to review every budget in the country?

THE CHAIRMAN: No.





DEAN LEDERMAN: The definition of "operating costs " will be a honey.

THE CHAIRMAN: There may have to be a formula established, but there will not be, as in a shared-cost programme, joint auditing and this sort of thing. Once the form is established, it will have to be taken as a matter of good faith.

MR. STEVENSON: That is one of the things, Ian, that might control it really, is that the universities already report to D.B.S. on a form ---

THE CHAIRMAN: That is true.

MR. STEVENSON: --- which breaks down operating costs in a form which would not be too difficult to apply directly to this definition, and it might be that the D.B.S. again will be accepted, although I would not be surprised if there has to be some formal check by the federal people of provincial records.

DEAN LEDERMAN: One-third to a half of the difference is what the Bladen Commission recommended in terms of the cost of different types of students.

MR. STEVENSON: No, this won't come into that. It is overall operating costs, with the exception of certain exclusions and these automatically, I think, take into account the higher costs that the institution would have with a high proportion of graduate students.

DEAN LEDERMAN: Yes, the university with



a medical school is going to have higher costs than the university without.

MR. STEVENSON: That actually is a principle which we felt we won in that we had been working for a long time by formula which related directly to actual costs rather than strictly per-capita or per-student formula, which under-plays the higher costs associated with specialized facilities or higher proportion of graduate students.

DEAN LEDERMAN: I think this whole thing does involve, though, as Tom says, a recession from the original position Mr. St. Laurent took. I heard his original address when they started, the university grant started.

THE CHAIRMAN: In 1956, was it?

DEAN LEDERMAN: Yes. This is a recession by the Federal Government from that position, and the insistence in universities is that universities are mainly concerned with their autonomy.

THE CHAIRMAN: Divide the enemy.

DEAN LEDERMAN: And they do their jobs best when they are autonomous, and that you have an income coming from several sources - one-third from fees, one-third from the provincial government, one-third from the Federal government, and you have got a bit of cushion against any single source of pressure.

PROF. McIVOR: Now Mr. Sharp says in the





sentence here:

"It was a measure of the Federal  
 "Government's concern for higher  
 "education that it was prepared to  
 "vacate four points of personal  
 "income tax and one point of corporate  
 "income tax to make it easier for the  
 "provinces to secure the revenue they  
 "require."

There is, of course, no obligation on the part of any province receiving this abatement, to spend its funds in any particular direction.

THE CHAIRMAN: Absolutely. This is an important point and again a point that, if one were in university, one would want to remember that the monies come into the provincial treasury and the 50 per cent of operating costs is merely a device, it is merely a manner of determining a sum of money which will then go into the provincial treasury. Once that money is in the provincial treasury, it is then a matter for the provincial treasury to decide overall of its expenditures including that sum.

PROF. McIVOR: And so, coming back to Tom's point, this particular procedure really represents an abandonment by the Federal Government of both fiscal and any other responsibility for the conduct of higher education in this country in the acknowledged national interest.



THE CHAIRMAN: Right out of it.

PROF. SYMONS: To paraphrase Mr. Sharp's quotation that has just been very aptly read, the Federal Government is so interested in higher education that it has withdrawn from the field.

PROF. McIVOR: That is right.

PROF. SYMONS: I would like to just comment on one point, if I may, Mr. Chairman. There were very serious inadequacies in the process of consultation, if I may say, on the part of the Dominion Government in connection with this fundamental decision.

As you know, there have been arrangements for a person from the university to join the office of the Secretary of State to advise the Federal Government on this matter. Robin Ross was seconded from the University of Toronto to work in Miss LaMarsh's office and he was there for some months. It is not putting it too strongly to say that despite the fact that he was the full-time retained adviser to the Federal Government, that he virtually was not consulted on any point at all by the Federal Government before it made this decision and its presentation; and while he had some glimmerings of what was occurring, he really was in the position when the week began that the Dominion Government was making fundamental proposals about university matters and other post-secondary matters





about which he was supposed to be their adviser, that he was as interested as anybody else when he read it in the paper for the first time.

Similarly, there was no real process of consultation with the Association of Universities and Colleges.

There is a fundamental shift in the direction of national policy in regard to post-secondary education, which took place without, as far as the national Government goes, any not only real consultation with post-secondary institutions, but without even making an attempt to have any real consultation.

DR. FORSEY: Was this the burden of Alec Corry's speech or part of it?

PROF. SYMONS: Yes, indeed.

DR. FORSEY: I heard repercussions to that.

THE CHAIRMAN: Did he really go into Ross ---

PROF. SYMONS: No, not in public.

THE CHAIRMAN: Robin Ross came into the government in the summer, just a matter of a week before all of this came to a head. I suspect it takes a new boy a while to get established in a senior position in the Government, particularly when you come from university.

DEAN LEDERMAN: The more I hear, the more



I am appalled - dismayed I am (perhaps "appalled" is too strong a word) at the lack of preparation of the Federal Government for this conference, the disarray in which they were as a matter of preparation and prior consultation.

PROF. FOX: Maybe it was deliberate.

DR. FORSEY: No, just their special talent for falling downstairs on every possible occasion.

PROF. FOX: I am not so sure. If you look at the order of the agenda which was established by the Federal Government, am I not right?

THE CHAIRMAN: Yes.

PROF. FOX: It was terribly important to put education on first, it seems to me, from the Federal Government's point of view, and I would think this is an indication that they knew very well what they were doing.

THE CHAIRMAN: Let me put it this way. I think the voices from two quarters - first of all from the financial quarters; secondly from the French-speaking ministerial quarters in Ottawa - knew very well what they were doing. Whether there was then proper equal voice given to those speaking on behalf of the educational quarters is the question I would not know, except we do know that there was very great difficulty on the part of the Federal





Government right down to the wire. It was only on the Friday at 5.30 in the afternoon when we were called with the Cabinet's decision on what they would propose, that those decisions were in fact reached.

Now, this is another fundamental thing in federalism that bothers me very much, and I wish we could get this out in public discussion somehow. Whereas it is true that what one was dealing with here was how much money the Federal Government was going to give up to provincial matters and so on, there is this point that beyond a purely mechanistic view of what is provincial and what is federal, there is still something concerned called "national interest" which is involved here, and I think it is not good enough to have the Federal-Provincial negotiations conducted in this way any more, where the Federal Government finally acts and the Provinces have to react, and that this is the basis on which these things are done.

Indeed, this is what the Tax Structure Committee was designed to get away from, that you would not have action and reaction, but have joint consideration of these matters in an attempt to move towards something which was in the national interest, which by definition would include both the interests of the Provincial Government and the Federal Government.



We made strong representations throughout the piece that "let us have a conference first that will try to settle what are the issues and what are the principles and problems at stake in this matter. Then we will get down to working out the means of doing it".

Probably the great tragedy was the fact that the conference that was supposed to take place in Victoria in June which, you remember, was on this question, was lost as the result of the provincial elections in fact and did not take place. Therefore you had no intermediate conference to discuss what it was you had to decide; you came right into the day of decision.

I do not think, if I may say so, that in this day and age, in this kind of country, in this kind of problem, that you can do things on that basis any longer.

PROF. McIVOR: There are two things that disturb me from that conference, Ian. The first one has been mentioned, that the Federal Government is apparently prepared to introduce major changes in philosophy in the field of education, for example, producing these changes apparently out of nowhere.

As far as we are told, there were no significant consultations at least with the two major interested parties, the provincial governments on the one hand who came and had this dumped in their





laps, and the Association of Universities and Colleges of Canada who, to the best of my knowledge, Tom, had no advance information really of what was happening. They had to concern themselves in their first day of the Ottawa conference with constructing frantic bulletins to send in to the Secretary of State that "let us take it easy now and continue for a year or two as we are going so that we know where we are".

The other thing is on the purely financial aspects, the Federal-Provincial financial arrangements, the sort of schizophrenia that seemed to characterize the Federal Government here.

Mr. Sharp, as I was mentioning to you, makes a brief statement that seemed to recognize the problem apparently. We could not state the problem any more clearly, I think. Then he proceeds to act in a manner which completely ignores the principles which he is stating, and he says:

"We must develop more effective  
"machinery for consultation between  
"the Federal Government and the  
"provinces. At such meetings all  
"governments would examine together  
"the impact upon the taxpayer of  
"existing expenditures and of major  
"new programmes which governments  
"might wish to undertake."



And he goes on to say:

"If and when Canada's Parliament  
"is faced with a choice between  
"increasing Federal expenditures  
"or reducing Federal taxes, it should  
"take into account the demands that  
"are being imposed upon the taxpayer  
"by the provincial and municipal  
"governments."

This is fine, it is certainly what has to be done;  
then he proceeds with no reference to this general  
sort of problem at all.

PROF. MEISEL: I did not hear the  
beginning of the discussion, of course, but the  
part that I witnessed since I have come in suggests  
that we are naturally very much concerned with  
education, and that this may to some extent have  
thrown us off the scent a bit from one of the major  
developments that obviously is occurring.

I think that the failure of the Government  
to do very much in education is really the result  
of it not being interested in education. Why should  
it be, since there is no structure within the  
Federal Government which generates policies which  
acts as a pressure group within the Government, to  
point to the responsibility of the Federal Government  
in post-secondary; but there is responsibility in  
the Federal Government, of course, to solve the





major fiscal problems.

What I think the Federal Government has done, and education has simply been a form of this, is to change its basic approach to Canadian federalism. I think that Bill Lederman's point about going back really on the position that Mr. St. Laurent took simply reflects in this case a recognition by the Federal Government that at the present time it is more expedient for itself to abandon any kind of idea of a national standard in certain fields of Canadian life (and education is one of them) where you simply permit the provinces to do what they think is appropriate, and if one province wants to put more money into post-secondary education or any kind of education than another, this is not the Federal Government's concern.

It may be, of course, that this is a necessary phase through which Canada has to go as a result of changing attitudes in one of the larger provinces.

PROF. McWHINNEY: This proposal had the support at least of the Ontario Education Department, correct?

You see, we are dealing with an area of doubtful federal constitutional power. The St. Laurent exercise really was a gloss on the constitution, so I suppose if Mr. Sharp enquired about other than economic considerations, he got that advice, that



it was an area of doubtful constitutional power anyway and probably contrary to the original spirit of the constitution. Then he gets in effect a situation of at least other provinces than Quebec - maybe all of them, maybe only Ontario - the other provinces apparently interested in taking back in effect an area of educational policy.

It may be, in a way, in that sense, taking these considerations into account, it may be a more justifiable decision on his part, more in line with what Paul Fox has been talking about.

PROF. MEISEL: But what I was trying to really deduce from this very much in line with what you say, I think there is a natural tendency on our part to look at what happens now and compare it with what has been going on in the past.

Perhaps we ought to change our perspective somewhat and keep stressing the implications of the new trends to what we ought to do in the future.

In other words, Ontario's posture in her discussions with the Federal Government and the other provinces ought to bear in mind the new kind of federalism that is evolving, at least as much as the remembrance of the kind of federalism from which we are moving away.

PROF. McWHINNEY: We should have perhaps put in our brief to the Tax Structure Committee - I read some comment by Mr. Robarts on the issue of





education that would almost suggest we should put in a brief too on educational policy since the Dominion is not doing it; that one should have at least an important appendix discussing the implications in terms of educational policy as a result of in effect financial decisions made involving education as a by-product. That is really what you are suggesting, John.

PROF. MEISEL: That would be one consequence of what I am suggesting.

PROF. McWHINNEY: Taking the leadership or the initiative.

DEAN LEDERMAN: Mr. Chairman, I do not think the Federal Parliament needs to retire from the field of higher education even under this present new arrangement. The National Research Council has already been mentioned, which is not only a grant-giving body but a research body. The Royal Military College is a university. As far as I am concerned, although this might be controversial, I would certainly argue very strongly about what the constitutional position is. The Federal Government can establish federal universities if it wishes.

THE CHAIRMAN: What about Queen's federal charter? You could presumably make a case that you have been cut off by the body which should be properly supporting you, I think.

DEAN LEDERMAN: That is a long story and



I won't worry you with that this morning, but it really goes back to Queen Victoria in 1841. It is a very complicated story and does illustrate the point I am making. When it comes to creating a corporate body that is to undertake education as an enterprise, the Federal Government can do it and I think they can give degree-granting powers.

I do not think, for instance, the Royal Military College had to go to the Legislature of Ontario to get degree-granting powers. They did, and Mr. Frost was very co-operative about it, but they did not have to; it could have been done out of Ottawa.

PROF. McWHINNEY: What about the M.I.T. for example? I was talking about this to a Quebec lawyer yesterday. R.M.C. quite obviously would tag on to the Defence Department, but what about an institute of technology? I suppose you could tag that on to defence in some way.

DEAN LEDERMAN: It is very easy to tie it into the line they are talking about of adult retraining, but I do not think you even have to do that.

DR. FORSEY: No, there is no restriction upon the Dominion power to create companies, is there?

DEAN LEDERMAN: No.

DR. FORSEY: That is, a juridical person like a company.





DEAN LEDERMAN: If they wanted to plant a federal university on an island in James Bay or in the Northwest Territories, they could certainly do it; and if our National Capital District is created, as Professor Rowat points out, they could certainly do it there. You could have the equivalent of the Australian National University.

PROF. SYMONS: Mr. Chairman, I wonder, does your experience suggest that there is now immediacy and urgency that you put a group to work on suggesting possible new procedures and structures not merely in the education structure area ---

THE CHAIRMAN: In the whole area.

PROF. SYMONS: But in the whole business of Dominion-Provincial negotiations and meetings? Would it be helpful to get a special group at work to come up with some specific suggestions that could be considered by our government?

THE CHAIRMAN: I think if one goes ahead seriously with the intention to have meetings on the requirements of Canadian federalism in the next year or two, obviously this group has to prepare itself to advise the Government on ways and means of doing this. It seems to be rather fertile ground at the moment. I quite agree that we should.

DEAN DILLON: It occurred to me when the proposition was brought up that the Federal Government could still give the university degrees, that



if they should choose to do that in support of the idea of an institute of technology, for instance, they are going to have to do it under present circumstances, they having already committed a lot of money to the provinces, and they might find themselves in direct competition with one or more provinces who decide they were going to do just this for themselves.

THE CHAIRMAN: Yes, there is some urgency. I think research, technology and the massive requirements of medical research that keep being brought up to us, certainly, these are areas of some immediate promise.

PROF. FOX: Is this the sort of thing that Mr. Robarts has in mind when he talks about a series of constitutional conferences? Is he thinking of this kind of problem?

THE CHAIRMAN: Paul, he actually has not used the term "constitutional conferences".

PROF. FOX: That was involved in the press.

THE CHAIRMAN: He has spoken about conferences on the problems of Confederation and the federal system, without excluding anything, including the constitutional; but it is not intended to be a narrowly constituent assembly or constitutional conference.

PROF. FOX: But is this the type of





problem he is thinking of?

THE CHAIRMAN: Yes, in its simplest terms, what he did say was that clearly there are a lot of issues worrying a lot of people in federalism, which suggests something is wrong with the way it is working, and we had better find out what is wrong and what can be done to remedy it.

Our discussion this morning, it seems to me, suggests that there are many things that one could pinpoint. We could prepare, I am sure, if called upon, a list of twenty questions at least that demand attention.

Perhaps we should attend to the coffee for the moment and then get on to our agenda after a short break.

--- Short recess.

THE CHAIRMAN: Before we return to item 2 on the agenda, I would like to correct an oversight I should have attended to earlier, and that was to introduce Mr. Garry Posen who is sitting behind you with Mr. Venton. Mr. Posen has just joined our Federal-Provincial Affairs secretariat. He has done graduate work in political science and will be giving special attention to the constitutional side and to other matters of federalism before us, and will be working along very closely with our subjects here.



Now, on item 2, Federal Capital Territory, as you recall we had intended having a fuller discussion of this today. However, one or two things happened. In the first place, the Prime Minister expressed his preference to deal with the constitutional and the broader federal questions today. Secondly, quite frankly, I had mentioned before that I thought that certain overtures were in the offing from the Federal Government to the Prime Ministers of Ontario and Quebec about some early attention to discussions of a federal capital territory.

I now understand that it has been decided in Ottawa that until the smoke clears a bit from recent bonfires, that this matter will not come up. I think it is nonetheless important, but the point was that it did not seem quite as urgent as it had seemed a month ago.

I would like to suggest, however, that we do deal with it more fully at the December meeting and, with your permission, or if I may make the suggestion, we might invite Professor Rowat to meet with us on that occasion.

MR. STEVENSON: Mr. Chairman, President Symons sent a copy of a clipping from Le Devoir which arrived this morning and which I hope we will have anyway in the next page of clippings, but it gives the text of Maurice Sauve's speech on 2nd November to





the Chamber of Commerce in Montreal, where he gives apparently his solutions to the future of federalism or some practical suggestions.

It is interesting, coming from a Federal Cabinet Minister, that he puts the creation of a bilingual Federal Capital District right at the top of his suggestions.

PROF. MEISEL: I would be very careful about ascribing to the rest of the Cabinet all the views that Maurice Sauve puts forth.

DR. FORSEY: Yes, on the other hand this accords with a resolution passed at the Liberal Convention.

MR. STEVENSON: And one which was posed to the Conservatives but not passed.

DR. FORSEY: I was going to add, to the cat fight which at the moment is the Conservative Party.

THE CHAIRMAN: I don't know if there are any matters of preliminary discussion to indulge in at this time. I put this on the agenda for consideration. Whether you think it would be better to defer this until we have a fuller treatment next time, or whether there are questions you want to raise that might arise in the preparation for the next meeting.

PROF. McWHINNEY: One matter, I remember when I was making my brief to the B and B Commission



the man before me, or woman before me, I think, had a proposal of a National Capital Territory, and Marchand asked her what law would apply there. Of course it was a staggering question to ask, because nobody had thought about it.

I take it we should consider whether the Quebec Civil Code would apply or whether the Common Law. Somewhere in our discussions that very interesting and complex issue should be discussed, or should people carry their personal law with them in the Burgundian sense?

It is surprising that Marchand as a non-lawyer asked this question, but it is a very intricate one. He repeated it that afternoon to the law students at the University of Toronto, and they made even more of a mess of it.

PROF. BRADY: It is a very practical question to ask.

PROF. McWHINNEY: It is. The law students made even more of a mess, because they started blundering around giving an answer.

THE CHAIRMAN: I did not realise when I thought it wise to postpone this subject for a month, that Mr. Perry would not be here today. I think it would be useful if he were here, to get bibliography or help to clarify the argument that we do not want a Federal District in Ottawa.

PROF. FOX: That was written in 1958.



I would like to suggest a slight alteration in our procedure at any meeting with Professor Rowat.

That is, we might settle right now very briefly that one or two or three people in this group be charged with the responsibility of raising for discussion with Professor Rowat and the rest of us, certain points such as Ted has just referred to. I think this will cause at least those members of the group to do their homework a little bit more thoroughly than perhaps the rest of us would do it, and maybe do a little bit of digging and give us better resources and better discussion. I feel that some of our discussions perhaps have not the depth they ought to have.

I was thinking, and I would propose now, if you like, that we might ask Ted McWhinney to look into these points of law. We might ask Roget to give us some opinion as a Franco-Ontarian living in Ontario, his own or his group on these same things, or the feelings of the Franco-Ontarian population in the area or also in Ontario as a whole. I don't know, maybe there are tax problems that Craig or Harvey or other people could be invited to raise. I am not thinking of a long presentation, but just specific hard points that these people have done some additional thinking on that we might not do if we just leave it loose.

PROF. MEISEL: I full endorse Paul's





suggestion, but I also think there are some broader problems that at some stage will have to be thought out. What I had in mind is the purposes that we ourselves see as <sup>determin-</sup>/ing our examination of Ottawa.

The B and B Commission is doing a great deal of work on this, and of course their perspective is very clearly defined by the problems that they have in trying to make some suggestion about how you can have a federal public service which is equally hospitable to French-speaking and English-speaking people, which means you have to provide some kind of city or cities in which English and French-speaking people can quite genuinely feel at home.

So their perspective is, to a very great extent, linked to this suggestion of a public service that does not discriminate between English and French-speaking citizens in the sociological sense.

Do we really want to look at it from that point of view? I think the B and B Commission is compelled to look at this from certain perspectives. As people who look at this more or less from the point of view of Ontario, we may have other interests, and I think at some stage we ought really to sit down and ask ourselves is it, you know, the effects of all this on Ontario policy with respect to education, minority education, language education and so on; or is it perhaps our concern for the survival of Canada, where we may want to get away from what we would



normally do, simply looking at it from the point of view of the Ontario Legislature in the short run?

PROF. McWHINNEY: I think it will mean considerable loss of revenue to the Ontario treasury - or would it? I assume it would.

PROF. BRADY: Mr. Chairman, we have to look at it from all these angles if we deal with it on the broadly federal and national angle. Ontario is involved, has an interest here, and we could not assess it as some project that would promote the national unity of Canada without considering how it affected Ontario.

I would endorse Mr. Fox's suggestion, with the proviso, however, that it does not exclude, of course, some general points, other points that some of the experts of the Committee might remark upon, might not emphasize. I suppose we need not worry about this, that members of this Committee will raise questions about the things they are interested in.

PROF. MEISEL: I think the reason I isolated this general aspect of the problem is that I think there is some danger in getting lost in the nuts and bolts of the thing, and overlooking the fact that there are implications of the Ottawa situation which affect possibly the survival of the country as a whole; and our Committee should be very clear in our minds whether we want to look at it from the overall point of view or just a much





more modest point of view.

The Jones report obviously looked at it within a very narrow text, and I think one of the things we ought to do is to draw to the attention of the Ontario Government that there are much broader aspects which affect Ontario in the long run and indirectly perhaps in some cases, which we ought to isolate and reveal for the Government to consider.

PROF. McWHINNEY: We should deal with it at two levels certainly, and on the lowest level we have to qualify in economic terms the effect of carving a piece out of the province. I take it that that is something where the Government of Ontario will have to know whether it means a loss of tax revenue and how much, so that they can weigh this against the higher policy considerations.

PROF. McIVOR: What do you mean by the "lowest level"?

PROF. McWHINNEY: I mean in an empirical sense, as distinct from policy sense. I was not deprecating the empirical approach since I used it myself.

DR. FORSEY: It seems Paul Fox's suggestion is excellent, that the two people he suggests for the specific purposes he mentioned are excellent. They are exactly the people that occur to me.

However, it seems to me also that there is



room for the kind of thing that John Meisel has mentioned and the panel of questioners who had special homework might be broadened.

John himself could do some framing of pointed questions on the kind of thing he had brought up; Alec likewise. Our economists here could raise certain specific economic questions.

PROF. FOX: I couldn't agree more. I am merely suggesting an organizational device for accelerating the quality of the discussion.

DR. FORSEY: I think it is excellent. Another point I make is it is just possible we ought to give some consideration to the possibility of creating a Federal District out of Ontario territory alone.

Suppose there is a strong feeling in the Dominion Government that there ought to be a Federal District, and suppose Quebec won't play and says: "Absolutely nothing doing. You don't get any of our territory at all".

MR. MAGONE: Some of the western provinces have been very disturbed for a very long time. I do not think they are as much disturbed now that we have got air travel, but before we had air travel it was a real problem for western people to come to meetings in Ottawa and have their lawyers get to Ottawa for cases, and they were held up and the case had to be postponed, that kind of thing. It is a



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little different now, although we are back in the pre-flying days with the air strike on, but I have no doubt they would have some suggestions about making it midway in Canada.

DR. FORSEY: "Unless the Queen otherwise directs, the seat of government shall be Ottawa". It seems to me there is a distinct possibility there might be strong feeling generally there should be a Federal District, but Quebec might decline to play and let Ontario be big-hearted and say: "All right, for the sake of the country we will concede such territory. You can have it for that purpose" and what had been purely Ontario soil will now cease to be. I think it is a point that might have to be considered, I don't know. It depends how far Master Johnson and his friends are prepared to go.

DEAN LEDERMAN: It takes us back to John Meisel's position though, the first question he asked. Is this worth doing at all? If it is worth doing, then the constitutional and economic problems are all soluble, I think.

PROF. McWHINNEY: Did Professor Rowat do the B and B study on this? I know they were commissioning comparative studies of the United States and Australia.

PROF. MEISEL: Ken McRae has been doing most of this, the people under him.





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PROF. FOX: Are they available?

PROF. MEISEL: I don't think so yet.

THE CHAIRMAN: We tried to get something from work in the mill.

PROF. McWHINNEY: And they refused in principle, did they?

DR. FORSEY: I understood from Rowat he had done some B and B work, that in fact what he would be giving us would be to a considerable degree based on what he had done. He could not give us the identical document for obvious reasons.

PROF. McWHINNEY: Except the data would be helpful because his conclusions as a very thoughtful political scientist, might be different from a lawyer's conclusion on the same data, and it would save a lot of trouble if one could get at the comparative studies.

PROF. MEISEL: I would suggest, Ian, that you try and get in touch with Ken McRae again, and if they cannot at this stage release the stuff - they should be able to release it fairly soon but if they cannot do it now, one thing we might do at a later meeting is invite Ken McRae, who is very knowledgeable about this, and has worked on this quite extensively and is a sensible chap, and just discuss these things with him.

PROF. McWHINNEY: Is there any reason why we should not bring down a whole line of professors?



There is no competition between scholars.

PROF. MEISEL: No, I don't think so.  
I just wonder, if we overload the thing too much,  
I suppose if we devote pretty well a whole day to  
it ---

PROF. FOX: As a procedural point, I  
wonder if we are going to devote a whole day to it.  
We may want to discuss some of the things that may  
arise at the January meeting in Kingston.

THE CHAIRMAN: I am inclined to think we  
had better have an early meeting of our procedural  
committee and establish both procedure and  
participation, if you are agreeable to that.

PROF. McWHINNEY: Professor McRae might  
be invited with Professor Rowat.

DR. FORSEY: I suspect we need a pretty  
considerable amount of time to deal with this thing  
at all.

THE CHAIRMAN: I would think so.

PROF. MEISEL: Every time I look at the  
proposition, it seems more difficult and more  
complex.

PROF. McWHINNEY: It is legally  
extraordinarily complex when you get into it;  
indeed much more complex than anything here, because  
it gets into conflicts of law of the most erudite  
sorts and different solutions in different federal  
systems.





DR. FORSEY: We might want to emulate the St. Jean Baptiste Society who, on the associate states in regard to all the real problems, say: "No, we leave that all to the experts". We are supposed to be the experts in this case.

PROF. McWHINNEY: It demands empiricism, not poetry, I am afraid.

PROF. FOX: I was thinking of it in several phases. I do not think we are going to settle anything definitely with Rowat in one meeting, but I was merely suggesting for the next meeting we might ask three or four members to do a little bit more work than they would otherwise do, if only they raised questions. Then we can pursue it from there.

THE CHAIRMAN: I agree.

I think we have a brief report from the constitutional and cultural committee chairmen to bring us up to date briefly on where we stand in those two departments.

As I suggested, the work underway there is on matters that were given priority attention at this time in view of the discussions that may take place during the winter. Would you like to begin, Bill, please?

DEAN LEDERMAN: Mr. Chairman, we have Dr. Forsey's paper on the Legislatures and Executives of the Canadian Federation. This is a study mainly oriented on the impact of the associate state type of



thing on the Federal Governmental institutions and how impossible things can become in these circumstances. As I say, Dr. Forsey has produced that paper for us.

Professor Watts of Queen's is continuing with a comparative study on second chambers which he was commissioned to do some months ago. I had a long talk with him about it last week and he has got his first draft done. He is a person with heavy administrative responsibilities, but as soon as he can get a clear three or four days I think he can get it set down, so that I think we are close to having this comparative paper now.

I have spoken with Dr. Creighton and he will produce a paper on the Canadian Senate as soon as he can see Professor Watts' paper.

As far as the amendment of the constitution and the constituent assembly problem are concerned, I am still under obligation to produce a paper there and I am in the same position as Watts. I have got it planned, I have it partly written, and if I can just get three or four days in one piece sometime I will write it. I expect to get that done over the Christmas interval at some point.

On Civil liberties and minority rights, we have been awaiting the McRuer Report which is going to be heavily oriented on this kind of thing; and Professor McWhinney has research workers



pursuing this problem in the Quebec context and is at an advanced point himself with being able to set down his own thoughts on the basis of what his researchers are doing for him and on the basis of his own research and life now in the Province of Quebec. So something is coming there.

In the area of co-operative federalism, the major study that is being prepared for us is Dr. Brady's study on the Dominion-Provincial Conference. Like the rest of us Dr. Brady has many commitments, but this is going to come in the near future.

The other studies that have been completed are already known to the Committee and I think that is the story on research and opinion papers or position papers that are still in progress.

THE CHAIRMAN: This little paper or memorandum on the associate states of Dr. Forsey's, this is distributed this morning, is it not?

MR. STEVENSON: Yes. Two papers were distributed this morning which have some relevance, I think, to what Dean Lederman has just gone through - Dr. Forsey's short paper on the associate states and Professor Fox's short paper on the Estates General, which I guess went out in the mail.

DEAN LEDERMAN: I was not reviewing things that had been done; I was speaking of work in progress





only.

THE CHAIRMAN: I understand.

DEAN LEDERMAN: We are very grateful, of course, to those who have finished their allotted tasks.

THE CHAIRMAN: I was really trying to pull the whole thing together in terms of what we had or nearly had.

DR. FORSEY: I am feeling for once wonderfully virtuous because I have actually got my job done.

MR. STEVENSON: Just a small administrative thing. We also distributed this morning the page of footnotes to Dr. Forsey's earlier paper on Legislatures; and if anyone would like, if they have the original, we might get a stapler here and get these two pieces together. Otherwise they may be lost.

THE CHAIRMAN: That is, the footnotes.

MR. STEVENSON: The footnotes. We will have a stapler here if anyone wants it, at the conclusion of the meeting, to get them clipped.

THE CHAIRMAN: That poem you quote, is that on page 4 of your associate states? That word is "devour" and not "devoir", is it?

DR. FORSEY: "Devour". Do you know where I saw that quotation first? Over the mantelpiece of Vincent Massey's country home in 1924.



THE CHAIRMAN: Ted, your work on this has reminded me I never did get to you after you got away on the summer about the studies of your research assistants and so on. Is that looked after all right?

PROF. McWHINNEY: No, only in the sense that I made no arrangement. I am sponsoring the boy for a number of graduate scholarships, so I do not expect any great financial problem with him. I operated on the ground rules that I understood from you and Paul for this.

THE CHAIRMAN: Yes.

PROF. McWHINNEY: But I did not mention any figures. I think I will try and get him something but I did not say anything specific.

THE CHAIRMAN: You might follow up with this and let us know what you think is proper here, because we never did tidy it up.

PROF. McWHINNEY: He did this in a very strange way. He was working for the Quebec Government and then for the B and B Commission; then he broke with all this, and I think it was very desirable but he was doing this in the evenings, so what I would take is on the basis of what is fair, which would be somewhat less than the number of hours he actually took.

THE CHAIRMAN: We had better try and straighten it out, "all things to all governments".





PROF. McWHINNEY: Wearing three hats.

DEAN LEDERMAN: Just before we leave this, I am not sure, of course, of the new studies we should be undertaking. Perhaps that will emerge in part this afternoon.

THE CHAIRMAN: Yes, I think we will follow on from there. Particularly these questions were raised. What issues do we want to deal with in federalism?

PROF. McWHINNEY: This probably comes into Alec's area, but you will notice "co-operative federalism" as a term of art is already out of date, and the phrase now being used in Le Devoir and others seems to be "new federalism". This is apparently Trudeau's new term and I am sure you have put up with this, Alec, but it demonstrates how important it is to do the studies if only to track down that terms have a certain viability and when they are cast into the junk heap.

THE CHAIRMAN: My own phrase over a year ago was "workable federalism" and I still think it may be somehow appropriate.

PROF. MEISEL: Unworkable.

THE CHAIRMAN: As an objective.

PROF. McWHINNEY: I might say, as I mentioned to you in private, there is a Cabinet team now which, of course, is going to correspond with the Quebec Committee, and this team of French-



speaking members of the Cabinet and associates in Quebec, Trudeau (John Baetz is the ammenuensis for the group) are preparing a position paper on issues of federalism going to the Province of Quebec and exhorting habitants in support of the new federalism, and it is a very interesting sort of evangelism.

PROF. MEISEL: Should we start an association of committees and commissions?

THE CHAIRMAN: That is the next step.

PROF. McWHINNEY: That is what the Kingston meeting is about in January, is it not?

THE CHAIRMAN: Dr. Brady, would you be good enough to speak to the cultural sub-committee.

PROF. BRADY: Mr. Chairman, the cultural affairs committee has no formal report to submit today. It had a meeting on the 14th October, a week before the last general meeting of this Committee. It has not had a meeting since.

However, its members, some of its members, have been carrying on the kind of work that they have been pursuing for some time, namely, endeavouring to get a clear view of what the bilingual school system in Ontario is, or the French school system; the problems of these schools and possibly what kind of policy the Provincial Government might pursue in respect to them.

This turned out to be a more complicated



subject than perhaps appeared at first, and the committee hopes in due time to complete the full report on the matter for this Committee, but I do not think there is any partial report that I could attempt to make with any profit today.

Perhaps Tom Symons might have something to say about the subject of cultural exchange which, of course, was a subject that this cultural affairs committee had interested itself in at the beginning.

PROF. SYMONS: There is little I can record, Mr. Chairman. The Committee's recommendation in regard to a director to initiate the programme, went to the Minister some time ago. He received it sympathetically and, I suspect, simply has not had time to take any action on it, because of the sort of things that we have been talking about this morning, which have occurred within the last two or three weeks. I do not know if Mr. Stevenson can add anything. I think that is the position, is it not?

MR. STEVENSON: A meeting was being set up for next week between Professor Rathe and Mr. Davis, but I am not sure of the date.

PROF. FOX: Will Mr. Davis be present at the meeting today?

THE CHAIRMAN: No, he is away all week, unfortunately. The Ministers to be present will be the Prime Minister, Attorney General and Mr. Allan.





Mr. Davis and Mr. Haskett will be away.

PROF. MEISEL: I think I saw the Mayor of Kingston coming up this morning on the train to see the Attorney General about a different point, about malfeasance, or whatever it was.

THE CHAIRMAN: On the studies in conjunction with the Department of Education, are there any complications there at the moment or any movement there?

PROF. BRADY: I do not think there are any special complications to comment upon.

THE CHAIRMAN: We will have to hear what the B and B Commission report is on accessibility to these studies that they have. Any other questions just on these matters?

PROF. FOX: I suppose that perhaps we all feel this way. I would just like to suggest that to the extent that it is possible, we continue to press for the appointment of this person who is to initiate the cultural exchange programme.

I think it would be a great pity if the provision that was set aside of a quarter of a million dollars was not used, or at least a large portion of it used to get the programme going.

I presume that we will, as a Committee, continue to hope that this is done pretty soon and that things get moving.

THE CHAIRMAN: From all accounts there



should be no obstacle to it being settled next week, I would think.

Now, we had the idea that the brief of the three unions in Quebec, dealing as it does, with questions of possible reform or change in the federal system, might provide a very good working document against which to develop some of our own ideas, and this might carry on into the afternoon session with the Cabinet Committee.

MR. STEVENSON: The members of the Cabinet Committee all received copies of this document, which was distributed before the last meeting, entitled "Principal Options of the Brief" and submitted by the three unions, so that I would hope they will have had an opportunity to at least give it a quick going-over. If not, perhaps it could be explained to them when we start.

DEAN LEDERMAN: On a point of information, and perhaps Dr. Forsey knows the answer to this: who prepared this brief?

DR. FORSEY: Well, originally I think Pierre Trudeau had a good deal to do with the drafting of it, but from what I know of Pierre's ideas, I should think it has suffered many changes since at the hands of the people for whom it was prepared.

PROF. McWHINNEY: He has got a recognizable slippery style. Does it look like it?





DR. FORSEY: Actually I have not read the French version. I read the English version, which is incidentally an atrocious translation - it shrieks.

DEAN LEDERMAN: This is not the full text either of all of it, is it? The first part is a summary?

DR. FORSEY: I am looking at this green affair. I would think, though, from what I know of Pierre's views, he probably had a hand in drafting it originally. It has had a good deal done to it since.

THE CHAIRMAN: Do we have the green affair?

DR. FORSEY: You sent it to me - no, I got it from my own people, that is right, sorry.

MR. STEVENSON: Mr. Chairman, we had the full brief as it appeared in the Montreal Star. What actually was sent out to members accounted for a summary in these first three pages of what really amounts to about the first two-thirds of the brief, which is the background, and then the recommendation, and the discussions of the five options, which is really only about a third of the total brief.

THE CHAIRMAN: It does embody the recommendations?

MR. STEVENSON: It does, and I think we felt that although the background is not gone into in any detail in the summary, it does cover the main points which it raised.



PROF. McWHINNEY: How did Trudeau get into this business, Eugene? Was he commissioned to do it?

11 DR. FORSEY: I think for a long time he was described as the technical, economic, legal and what-not adviser of the old Quebec Federation of Industrial Unions, the C.C.L., far before the merger. Then I think he became more or less the same thing for the Quebec Federation of Labour where it succeeded that and the old Quebec Federation of Industrial Unions worked very closely on a great many things with what were then the Catholic Unions. Pierre did a memorandum back in 1954 for these two bodies, as I recall it, certainly for our Federation, and I think they just asked him to do something additional. I am quite sure some of these recommendations are not his.

PROF. McWHINNEY: Unless he has changed.

DR. FORSEY: I do not think he has, from what I have heard of his pronouncements recently, public and otherwise, any conversation I had. He may have. But some of this, I am sure, has been changed, quite properly and naturally, by the people whose business it is. They did not want to take so harsh ---

PROF. BRADY: What kind of reception did this submission have from the trade union people?

DR. FORSEY: I haven't the faintest idea.



I am still back in the 19th Century as far as unions are concerned.

PROF. FOX: I could answer this question, that there has been a press clipping that some of you may have in the Globe from the Quebec bureau of the Globe dated October 20th. I may just read a bit of it.

"The Catholic Farmers Union convention  
 "yesterday told its executive that it  
 "should have consulted the membership  
 "before endorsing the joint Farm-Labour  
 "brief to the provincial Government  
 "rejecting separatism. The convention  
 "passed without serious objection the  
 "resolution criticizing the executive  
 "after it was proposed by Xavier Fortin,  
 "Secretary of the Saguenay Regional  
 "Federation, C.F.U."

Then skipping over it, it is pointed out that the convention delegates made it clear that they did not oppose the content of the brief by passing a second resolution endorsing it.

DR. FORSEY: Just like the Conservatives.

PROF. FOX: What they criticise was the fact that they had not been consulted. This might cast a light on who prepared the brief.





"Mr. Fortin said in an interview

"afterwards that he was not a separatist.

"'But if we want to get justice from

"Ottawa, we should not reject the

"option of separatism'."

This adds a certain pious note. I imagine it  
reads better in the French.

"When his resolution was approved

"a number of delegates who abstained

"from voting muttered that Mr.

"Fortin had 'slept with Bourgault'."

This is Pierre Bourgault, President of the  
Separatist R.I.N.

/ Mr. Magone .....



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MR. MAGONE: That is libellous.

PROF. FOX: I don't know, it may read better in the French. I leave that to Mr. Seguin.

DR. FORSEY: I think there was some kind of objection raised at the meeting of C.N.T.U., wasn't there? I don't remember what they said. I got the vague impression there was some dissatisfaction.

MR. SEGUIN: Yes.

DR. FORSEY: There were objections and it was reported, but on the whole the measure was backed, though there were voices of discontent here and there, especially from certain aspects of the C.N.T.U.

PROF. McWHINNEY: It got a very good press, but with so many issues one felt really about the general principle, I have the impression there was not very much discussion by rank and file, or even read. It is true of most places.

DR. FORSEY: This is true of a lot of labour members.

PROF. McWHINNEY: Not merely labour members but any representative members.

DR. FORSEY: Not altogether imperfect, either, because leaders should use their heads on behalf of their constituents and not just be gramophones.

PROF. McWHINNEY: There are gratuitous





projections on behalf of constituents in whatever group you are dealing with, labour or management.

PROF. FOX: There is one interesting point in this that struck me, that whoever was drafting this was able to get both the Q.F.L. and C.N.T.U. to work together. Eugene, you can probably tell us about this. They have been at loggerheads on jurisdictional disputes.

DR. FORSEY: This must have been a special interest of the whole movement. It mystifies me how it could possibly take place.

PROF. FOX: And they combine it with what I gather is a very conservative (small "c") Catholic Farmers Union. It seems to me to have been a bit of a feat.

DR. FORSEY: I think probably the explanation is that the preparation of this started some considerable time ago before all trade union groups got into this to the extent they did recently. I think quite a number of them got very frightened about what might happen economically to their members if some of the wilder ideas went through. This I gather from the then secretary of the Quebec Federation of Labour. I think they got together to draft something, or someone to draft something for them several years ago.

PROF. BRADY: It is an odd fact that the economic prospects of the matter are not really very



penetratingly gone into.

DR. FORSEY: Nothing is gone into very penetratingly. They have some of the usual stuff in the preface, whooping it up about American investment and so forth, but there is not much economic stuff in it. Their economic aspect of it comes in in that they are rejecting separatism, they are rejecting associate states, and this is one reason why they got interested in the thing in the first place; and they suddenly begin to say to themselves: "This is all very fine for the bourgeois nationalist intellectuals, but where do our members fit in all this? What will happen to our standard of living if separatism comes about or associate states?" and they get very frightened.

PROF. McIVOR: I think as stimulus to detail discussion, the brief is perhaps less satisfactory in its economic aspects than in other areas with which it deals.

There are general observations about the difficulties of the present constitution; what happens whereby certain economic and fiscal powers are divided by the Provincial and Federal Governments and the difficulties that this leads to for rational arrangement of the country's economic affairs. Then they suggest that there should be consultation in such matters as monetary and fiscal, trade, immigration policies, but beyond this there are really



no positive suggestions that are introduced at all.

DR. FORSEY: It is very much again some airy generalizations of a very vague kind. When I got the whole document I was very much disappointed with it after what I had read about it - vague and airy generalizations which never get down to cases at all. Just exactly like the St. Jean Baptiste Society, they do not really say "We leave it all to the experts" but they might as well because they do leave it to somebody. They do not do any homework themselves at all.

PROF. MEISEL: I think there is a significant element in this. Although details are not worked out in terms of economic aspects of the problem, the very fact that they stress so much - and they do stress it although not in terms of the number of lines but in the kind of things they say -- they stress the tremendous importance of economic opportunity in the brief. It seems to me that this is a great pointer to us.

I think that one of the major problems of the relationship between English and French-speaking Canadians is the economic disparity between them, and it is very important for us to realize that there are some leaders in French Canada who are obviously aware of this and who are willing to temper, if you like, narrow political national interest by looking at the economic consequences of political nationalism.





I think in this case what this brief suggests is that we ought to look at a number of activities which have economic implications for Canada, that are on the face of it perhaps only remotely connected with nationalism or federalism but which in the long run will create the kind of equality of income between English and French-speaking Canadians that will take the wind out of some of this nationalist agitation.

PROF. McIVOR: I merely observe that while stressing the need for economic opportunity, they do not go so far as to formulate any set of particular proposals that one could come to grips with.

DR. FORSEY: No, what happens, they specifically say that l'affirmation technique should be exclusively a provincial matter, and they specifically say social security, even those parts of it which have been transferred to the Dominion by constitutional amendment, should be repatriated, which of course include unemployment insurance. This seems to me a very poor way of promoting mobility of labour, and quite a number outside of this I should say are running counter to the thing that they profess to be so concerned with.

PROF. FOX: May I suggest there are some specific ideas given. I entirely agree with what has been said about the vagueness of the economic



commentary in it, but I think there are specifics, for instance, in relation to bilingualism. Here they do get down to basic and specific statements.

I would think, Mr. Chairman, that we might profitably discuss it but beginning, say, at page 9 of the brief and perhaps going through it, maybe not point by point because that would be too long, but at least moving along and looking at some of these specific things.

DR. FORSEY: What heading is that?

DEAN LEDERMAN: "New Dispositions".

PROF. FOX: Probably is "New Dispensations", I don't know.

DEAN LEDERMAN: I regard this as a great improvement on that statement from the Committee of One Hundred. They do make some important choice, albeit in general terms.

DR. FORSEY: I suppose we should be thankful for small mercies, but I was surprised to find how small the mercies were when I started to analyze it.

PROF. MEISEL: We should not forget this brief was not intended for us, but for the Quebec committee on the constitution. It is true it is not very specific about the economic, concrete facts, but this is not the committee that would be normally pre-occupied with those economic details. All they are really saying is that economics are important; constitutional committee, please note.





PROF. BRADY: At least one can say it is not so high up in the atmosphere as the St. Jean Baptiste Society of Montreal was in their submission.

DR. FORSEY: No, it is not as far up as all that.

PROF. McIVOR: It is just up.

DR. FORSEY: Yes, just up. I am afraid all of this leaves me rather cold, because it is disappointing to find people who are so anxious, as I understood they were, to get down to brass tacks on this thing, still remaining a considerable distance above terra firma when it was all done.

PROF. SYMONS: Mr. Chairman, just following Dr. Forsey's comments, I must say I feel a little astonishment at this too. It seems to me that for a document from this group, particularly with the C.N.T.U. involved, that it is an extremely disappointing and diffuse document. That is one thing about it that really I found surprising for something at this stage in the discussion, particularly with the organization involved.

PROF. BRADY: Probably put together by a committee.

PROF. SYMONS: Yes, I think it perhaps resembles some offering by a committee, although the other puzzling thing about it may not affect that, and that is the extreme conservative tone of the



document. It reads more like the Conservative manifesto than a brief from a group of trade unionists.

The phrases in it that really do leave one wondering about the authorship, on page 7:

"We do not favour constitutional upset  
"if we can avoid it."

And on the next page:

"Such a radical and little explored  
"choice would seem a gratuitous and  
"ill-considered one."

I was really worried by the fear of change which pervades the document. I do not altogether regret the fact.

PROF. MEISEL: May I interrupt? I think you should think of this within the context that it is produced. This is a brief to the constitutional committee which for the first year and a half of its existence was completely swamped by extreme nationalist and, I would say, most of them, quite irresponsible submissions of one kind and nother.

I am sure what happened was these chaps decided: "These characters on the committee have been hearing all this stuff. Let us now tell them that there is another viewpoint"; and I think the conservatism is in part produced by an attempt to offset the otherwise radicalism of these other groups.



DR. FORSEY: I think this is important. Wishy-washy as this appears from my point of view, it probably took a good deal of courage to say: "We think some things may be left more or less as they are".

PROF. MEISEL: I am not interested in how we react. I was not disappointed. I was surprised to see the newspaper stories because I got such different impressions from reading the accounts in the English-speaking press and the French-speaking press, particularly the headlines.

Then I got it and I thought that within the political context it was an extremely good document, assuming that what the chaps really wanted to do was to present to the committee a point of view substantially different from what most of the other groups had presented, but nevertheless reflecting the kind of interest that the members had.

I think that some of the clauses that we may find a little hard to accept, such as, say, unemployment insurance reverting to the provinces and this kind of thing, I think would probably make a good deal of sense within the thinking of a great many Quebec nationalists.

PROF. SYMONS: Yes, Mr. Chairman, if I could just clarify a bit, I am not disappointed at all. I am interested and a little surprised by the





conservatism of the approach and I think what Professor Meisel and Dr. Forsey say, this is in itself comment upon the situation in Quebec, when the major unions feel it necessary to take this attitude. I found that in itself interesting - perhaps a shade surprising that it felt forced to that point, but I think it is also a sign of real responsibility on their part.

The first thing which I do find a bit disappointing is on the occasion when they are making their major presentation after some years of gestation, they have still not quite come to grips with so many of the points that have been under discussion in public for twenty-four or thirty-six months.

PROF. FOX: Still, they do raise specific points. I am inclined to share John's feeling about it. I was personally surprised it is as moderate a document as it is, and I am interested, and I think it could be very worth while for this group to discuss the specific proposals they make, because some of them are very specific about the transfer of powers and so on.

I wonder at this point if we should not get down to specifics and start crystallizing our opinions, in case the Prime Minister wants to get a reaction in fairly short order on some of these ideas.



DR. FORSEY: I think with some of the specifics that are there, you may be inclined to wonder whether it is quite so conservative as it looks.

THE CHAIRMAN: I think we should not be too concerned about our agreement or disagreement with this paper. I think we thought it happened to gather together a number of recommendations which were a useful summary of the possible proposals.

I quite agree we should get into the meat. Bill, had you been through this pretty thoroughly? I am just really seeking some help in working through this, because it is much more, I feel, in the perhaps constitutional area.

PROF. FOX: What time do we have for this?

THE CHAIRMAN: Taxis will leave here at quarter to one.

PROF. FOX: We have half an hour, so I think we have to move fairly rapidly.

PROF. MEISEL: What is the plan when we meet with the Cabinet members?

THE CHAIRMAN: Right after lunch.

PROF. MEISEL: Do we discuss our reaction to this brief, is that the idea?

THE CHAIRMAN: I might say, this afternoon, I do not want it to appear that our purpose here is to say whether we agree or disagree with a brief of





three trade unions from Quebec, in particular.

I think what we want to deal with is the issues that it purports to raise.

DR. FORSEY: Yes, in this printed document here they are confined to about four pages. First of all you have got a declaration of fundamental liberties. Then you have got the proposal to abolish the right to reserve and disallow legislation. This is nothing much, it is dead anyway.

Then "rid the constitution of certain imperial phraseology". Whatever that means.

Then you come to something very substantive indeed on the Supreme Court of Canada.

Then you come to radio and television under concurrent jurisdiction.

Then a bilingual and bicultural federal capital; then the right of the provinces to be consulted on immigration policies; then you have the right to be consulted on monetary and fiscal policies, as well as foreign trade policies.

Then you come to the question of bilingualism at the federal level and at the provincial level.

Then you come to clarification of the powers of the two levels of authority, and the first clarification is to hand over higher education, technical training and so forth to the provinces;



secondly, you have got recognition of the control of the provinces over certain cultural agreements.

Then you have the whole holus bolus jurisdiction over social security. Then you get economic policy and there you have all sorts of co-ordination and so on.

Then you get to delegation of powers - a very tricky one there, both ways, from the provincial to the Dominion and vice versa, and it does not say how many provinces or on what terms or anything else.

Then you have equalization payments to the poorer provinces by the Federal Government, "but the latter should not collect taxes for ends that are purely provincial".

Then "amendment procedure" where they say "Leave it alone for the present", so there are not an immense number of things there, so you have the whole picture of the brief in the way of anything approaching the specific.

PROF. BRADY: It seems to cover the whole field.

PROF. MEISEL: We can discuss each of them in turn and simply react to it, and ask what does Ontario think of it, or what do we think Ontario thinks of it?

On the other hand I think we also ought to consider to what extent some of the proposals reflect simply the inane fault of the person who drafted it,



as to the extent these proposals reflect a genuine body of opinion that the Ontario Government will have to confront at various meetings.

My own view is that this is not as extreme a document as a great many, and that probably this is the kind of thing that Ontario ought to look at with extreme seriousness; because even some of the, what seem to be, more radical demands, may be demands that will be presented to the Federal Government and to the other provinces.

DR. FORSEY: It seems to me what we should be considering this afternoon is essentially what questions should the Ontario Government ask if this kind of thing is put in front of them.

PROF. FOX: Right.

DR. FORSEY: I had a tutor at Oxford who constantly used to say when we were reading essays: "Now, what precisely do you mean by that?" and I think that this has got to be over and over again the position of the Ontario Government as it is presented with something like this. "Now, precisely what do you mean by that?".

PROF. McWHINNEY: We are not discounting this as an end in itself.

DR. FORSEY: No.

PROF. McWHINNEY: So in a way, could you not, Mr. Chairman, focus discussion by doing as much as Eugene did - just a brief summary in effect





about the key issues raised in the brief and presumably treat them on their merits. In other words, we are not trying to assess the political weight behind them.

DR. FORSEY: No, no.

PROF. McWHINNEY: Simply because this body put them in.

PROF. MEISEL: I think one of the traditional uses of this document, it seems to me, should be the fact that all this stuff at the beginning, the long introduction, I think, is a fairly good sort of representation of what a great many people in Quebec think; and if Ontario Cabinet Ministers do not have time to read Le Devoir, this is not a bad way of becoming exposed to quite a lot of sentiment that is pretty widespread.

MR. STEVENSON: Mr. Chairman, the letter to the Cabinet Ministers very much says what went in the Chairman's letter to the Committee as to what the Committee meeting should consist of.

We suggest the brief should be used as a framework for a discussion and perhaps sub-committee chairment might introduce the discussion of the brief by perhaps summarizing the recommendations as they relate to their areas and the implications for Ontario, and opening discussion from that.

THE CHAIRMAN: Yes. As I say, I would rather like this if we could divide this up to lead



us through the area concerned, so that I can be disengaged to the extent of keeping the machinery in motion.

I think if the Chairmen of the constitutional and cultural sub-committee could lead us through those arguments and recommendations as talking points, there seems so little in it of an economic kind, that perhaps we might confine it to that.

Then I think we should get into some consideration of the associate states, based on Dr. Forsey's paper; and perhaps some reference to the Estates General as discussed by Professor Fox. -- All this leading in the path of trying to get some direction and also trying to give some advice as to where the work of the Committee ( and we have a good deal of it now) might break out in terms of use at these meetings on Confederation that we want to see take place.

DEAN LEDERMAN: Mr. Chairman, I think, if I understand you correctly, what you are saying is that we use this document as an agenda, so to speak?

THE CHAIRMAN: Yes.

DEAN LEDERMAN: And the second point I make which perhaps does not need to be made, is that we are not trying to take a committee position on this point by point.

THE CHAIRMAN: No.





DEAN LEDERMAN: Because we could not possibly. Our object, I think, is to reveal a pretty wide spectrum of all the possible opinions and implications for the Cabinet Ministers, but we are not trying to reach any consensus ourselves. Am I correct in thinking that is the spirit in which we go at this afternoon's meeting?

THE CHAIRMAN: Yes, the only instruction I have is that the Prime Minister and the group wanted at this point to have a discussion with you about some of the issues and alternatives that are coming into being. This would be a preliminary kind of discussion, but our purpose in choosing this paper was to give, as you say, an agenda to work from so that we would not just be riding off in every direction. How does this break down in this way?

PROF. FOX: May I suggest we do it sort of informally and Bill might start off on the first point about Bill of Rights, and I think Professor Brady, as Chairman of the sub-committee might comment. I do not know that we want to labour the other point, but it seems to me an orderly way to proceed.

DR. FORSEY: It seems to me that the chairman of the cultural sub-committee would certainly be the one to deal with the business of official language and all that, most decidedly. Some of the



other things, it seems to me, are things that the chairman of the constitutional sub-committee would appropriately deal with.

When you come to bilingual and bicultural Federal Capital, I should think both of them might have to tune up.

DEAN LEDERMAN: Harmony might not be the result, though.

DR. FORSEY: Even in Mr. Perry's absence, we might get some comments on one or two things from the economic sub-committee; for instance, this business of the balkanization of policies in the field of economics and so on, and the question of social security, I suppose, would come to some extent within the purview of the economic sub-committee.

THE CHAIRMAN: Well, Craig, you might lead us into some of this, but they are pretty sketchy.

PROF. McIVOR: Yes.

DR. FORSEY: Equalization payments.

PROF. BRADY: Mr. Chairman, I would like to invite comment on this paragraph on page 9: "Declaration of Fundamental Liberties and Rights".

MR. MAGONE: This is taken from the Atlantic Charter, is it not?

PROF. McWHINNEY: I didn't think anybody read that any more.

MR. MAGONE: My impression has been that



these declarations that have been made in the past, the Canadian one, came as a purely political gimmick. There have been innumerable cases where it has been cited in the Courts as a means of disposing of the case one way or the other, but the Courts have never - subject to correction because I may have missed some case - the Courts have never decided a particular case on this basis. They have decided it on the common law, which protects, I think, all of these things; and the Courts are very careful, and have been in the past, to see that they did, such things as "contrary to natural justice" and things of that kind. It is an extremely wide term that the Courts have lately been interpreting and giving effect to.

That is my view. I think it is unnecessary.

PROF. McWHINNEY: This impetus, of course, in this brief, has been responded to very dramatically in the last month. This is conveyed in one of the reports of the constitutional committee in preparation, but the Commission on Reform of the Quebec Civil Code has responded to pressures such as this, and it is putting a Bill of Rights in the Civil Code in the private law, which you can do with the Civil Law very easily, particularly when you have a Code.

I notice this is given the effect of universality to apply to all provinces; but it might





well be that some initiative in Ontario that could actually be more concrete than the Ontario Bill of Rights, might occur to the Premier as useful following up these Quebec initiatives, than the politics in Quebec as far as the Civil Code is concerned. There is no question it will have a fundamental effect in the principles.

MR. MAGONE: Effect on the trade unions.

PROF. McWHINNEY: Yes, it will.

DR. FORSEY: I was under the impression they were proposing that as something to be embedded in the constitution beyond the power of any Legislature to touch. Some of it, I must say, seems to me pure wind. This has come from all sorts of people, including those who do not subscribe - mostly those who describe themselves as progressives.

I do not see how under the sun you can guarantee in a Bill of Rights the right of all citizens to a sufficient standard of living, and the right to work for all citizens would be a honey when you come up against union pressure.

PROF. FOX: We have a Bill of Rights now after all which is a statute of Canada, passed by the Diefenbaker Government; and this, I think, envisages, as Eugene suggests, something more than that in both its nature and that it would become a constitutional amendment, or portion of it, which presumably would become an entrenched clause;



whereas the present Bill of Rights is, of course, only a statute of the Federal Parliament, but it also is wider in that it includes other things, notably in the third line under A.1: "Statement of Educational and Religious Rights." Freedom of Worship is set forth in the Bill of Rights, but as I recall there is nothing about freedom of education in Mr. Diefenbaker's Bill of Rights. So here is something.

PROF. FOX: So this goes further, I would think, in two significant directions: one, the syntact nature of it and, two, total compass.

DR. FORSEY: It seems to me you have got two different kinds of rights here. If you are talking about educational rights of linguistic minorities or religious minorities, you have got something that the law can deal with fairly adequately. If you are talking about the right to work or the right to a suitable standard of living, my gosh, how in the world can the law lay down anything about that? What is a suitable standard of living?

DEAN LEDERMAN: I would not agree that the educational system is much simpler than providing work. I mean, the organization and the funding and the policy decisions and so on.

DR. FORSEY: It would be an extension of the kind of thing you have got in 93. You have





some kind of guarantee there. I admit it has not worked out, but it is not the fault of the editors but the inherent fault of the political revolution that has taken place. You might extend that to French. You might not only add Protestant and Roman Catholic but French-speaking and English-speaking. There is no difficulty about putting that in, and if you have got something there you could do something about it. It has been possible to introduce remedial bills into the Parliament of Canada, but if you try to put in stuff like "suitable standard of living" how can you under the sun?

DEAN LEDERMAN: One of the basic points I would make about special entrenchment, which is what Paul is referring to, is this means a shift of control, very considerable shift of control from the legislative bodies to the Courts. Then you start doing the kind of thing that is being done in the United States. I am not saying whether it is good, bad or indifferent, but you get Courts giving detailed direction about how educational systems are to be run, about how districts are to be controlled by representation in the Legislature and so on. One must realize that if you have special entrenchment, then you are taking it out of the hands of the Legislature.

DR. FORSEY: Excuse me. You are not



necessarily doing it entirely, because Section 93 does not entrust the defence of the educational rights and privileges of the Queen's Protestant and Roman Catholic subjects to the Courts.

Provision for Newfoundland education, but in the other provinces it is the executive and the Supreme Court of Canada. It is not beyond the bounds of possibility you could write in some authority.

DEAN LEDERMAN: You might draft in that way. It is not what they are talking about.

PROF. McWHINNEY: The intention is to restore the role of the Courts but, of course, a somewhat different Court than the present Supreme Court of Canada.

If you look at it, it is part of the way political coalitions are formed, but the insistence on Bill of Rights, Human Rights, was part of the demand, if you wish, of the radical intellectual group and not the separatist movement but certain University of Montreal professors and others and the young lawyers who are demanding a Bill of Rights of a highly radical sort which would affect Section 93, certainly would affect labour contracts; and they seem to be looking towards judicial enforcement of their rights.

DEAN LEDERMAN: They are very definitely linked to a Court but a re-constituted Court.

PROF. MEISEL: There are two main points



that arise from this clause. One is the question of what can and what cannot be enshrined this way in the constitution. This is one large set of problems.

The other one is, I think, the point that was mentioned, namely a group with normal modern form very forceful on their belief that it is empirical, does not want a too set form, but nevertheless feels it necessary to ask for the enshrinement of things that are not easily protected - such things as Eugene mentioned at the beginning.

PROF. FOX: May I put a third point. I think I recollect they are proposing that the Federal Parliament be the body to enact or be the body under whose jurisdiction the Bill be enacted. That is what it says here:

"Applicable to all citizens in all  
"provinces."

PROF. McWHINNEY: Constituent assembly, surely.

PROF. FOX: How are you going to get it applicable to all provinces unless it is Federal?

DR. FORSEY: Have you got the full text? The second paragraph says:

"Obviously there can be no question  
"here of a law adopted by a parliament  
"whose jurisdiction is restricted. This





"declaration of human rights must be

"as one with the constitution and

"incapable of amendment except through

"the procedures used for like material."

It is probably better put in the French version.

DEAN LEDERMAN: No Diefenbaker Bill of Rights. We read this as preferring the American model.

PROF. BRADY: Amendment really comparable to the Declaration added to the American constitution.

PROF. FOX: When saying what federal system it is a practical consideration, practical point they are making in the institutional - weighing if it is linked with the reform of the Supreme Court of Canada.

PROF. MEISEL: It is the British Parliament has got to do it, because they say earlier they regret the departure from appeals to the Judicial Committee, and they also say we should not do anything about amending procedure, so the only place you can do it is the British Parliament.

MR. MAGONE: In one of the earlier constitutional conferences, when Tommy Douglas was Prime Minister of Saskatchewan, I think the conference then was to some extent on his insistence that there should be incorporated in the formula a Bill of Rights. This seems to be the same thing.



They suggest amendment passed by Westminster, incorporated right into the constitution. As I said before, I am agin' it.

THE CHAIRMAN: I might ask a purely political question. What sorts of things is this phraseology attempting to achieve; what sort of hard, practical requirements is it trying to serve that are not capable of being served under present arrangements.

PROF. MEISEL: I think that is the wrong question. I think the important thing to me is the wish of the traditions, and I think a great many people in Quebec and outside, to have some of these objectives of the society put in the form of a constitutional clause, which I think most people know is not capable of ever being implemented ---

THE CHAIRMAN: I am asking, what are those objectives?

PROF. MEISEL: I think in this case in part are purely economic. Everybody having a job, this is one of the things they are demanding.

PROF. McWHINNEY: It is not solely that. The brief represents opinion and it tries to gather all bodies around it, and one of the very noticeable things marking the movement is its coalition of extremes so far as groups, and there is no question the university radicals, who are very radical, they are members of a strange body





called the socialist party which does not run candidates, but a lot of these people are very interested in correcting the Duplessis issue, if you could call it that, and I accept the sincerity of the motives.

So a great deal of the emphasis on having the bill is in the sense that you have got to be educational, but a lot of it is also traditional and fundamentalist when you get into education and religious rights. You probably have a sort of Irish constitution element there.

I take it this part of the brief was put in by the intellectuals, in response to intellectual opinion in the community.

DR. FORSEY: I think one thing they are driving at is something like the American Bill of Rights, guaranteeing certain things that most of us would think of as fundamental rights. Then education, and certain education and religious rights would be something rather special here; third, this advanced socialist stuff about right to work and so on, which incidentally could have a dreadful backlash.

DEAN LEDERMAN: Take Ian's question, what it is after. It is rather dramatic, you see; it is a cry for justice.

THE CHAIRMAN: The point I was trying to get at, Bill, is if, as I have always understood it



to be, laws are impractical, they are bad laws, and what is it one is trying to ---

PROF. McWHINNEY: Why are they impractical?

THE CHAIRMAN: Is this not the whole theory of improvement in the legislative system, that when things become unworkable or unpractical, the argument is it is time to change the law.

PROF. McWHINNEY: I mean, your Ron Curelly case was decided admittedly by common law majority on the basis of interpretation of the Quebec code, and as constitutional then this has stood. It would have been very difficult to have given a decision if it had come up in Ontario on the same fact situation. There was very strong sentiment in Quebec in favour of the classical political civil rights amongst the intellectual community, and the feeling which Mr. Magone rightly reflects that the Diefenbaker Bill did not do anything here; it has been largely left out of existence.

There is a desire among certain intellectuals to move very concretely here, and I have no doubt that they would be reinforced very dramatically, these proposals, the activist liberal programme, if such were in existence and wanted to do anything about it; but whether all Quebec labour supporters are up in arms about the need for this, is another matter.

DR. FORSEY: I should think that for the



whole of this it would have a very wide degree of support in English-speaking Canada. I don't think this is peculiarly a French Canadian thing at all. This was special in the case of French Canada, of course, concerning linguistic rights, but I think a lot of this is common ground mainly.

PROF. McWHINNEY: Among the academic intellectuals.

DR. FORSEY: Whatever language or origin.

DEAN LEDERMAN: To answer Ian's question, take a phrase like "freedom of speech" which has to be particularized, and your question is who is going to particularize it, the Court ---

THE CHAIRMAN: This is it.

DEAN LEDERMAN: Or the Legislature or both, and the answer, I think ---

THE CHAIRMAN: Or municipal by-law.

DEAN LEDERMAN: The answer is both, I think. Take the present proposed amendment of the Criminal Code on hate literature. We are going to outlaw a form of words which has never been outlawed before under our present system. The whole issue is to particularize, and it would have to be particularized in statute one way or the other.

If this were the United States, not only would some state Legislature deal with it, they might frame such a Criminal Code provision, and those





who did not like it would take it to the Supreme Court of the United States, and Chief Justice Holmes' principle would be applied to it, and the Court would have a second go at it, the Court would have the last word. This is the sort of trouble that goes on.

PROF. FOX: I think without knowing accurately here, in some of the treatises ~~that~~ this reference to educational rights is one that you would have enshrined in your constitution, the right of minorities in other provinces, which would safeguard their education in a particular language. Therefore the minority group, as the French-speaking group in Saskatchewan, say, might under the constitution apply to the Supreme Court, reconstituted Supreme Court, to safeguard the right and I believe perhaps to secure judgment in their favour.

DEAN LEDERMAN: Then does the Supreme Court make an order direct to the Saskatchewan Public School Board?

PROF. McWHINNEY: I suppose following the American pattern.

DR. FORSEY: Again I think you might clearly have some special kind of guarantee written in there. I don't think for that particular thing you would necessarily have to have ---

DEAN LEDERMAN: I agree there are alternatives we ought to look at.



DR. FORSEY: I think if this kind of thing came before a Dominion-Provincial conference, there are many questions which the Ontario Government could legitimately ask: "Exactly how are you going to do it, and are you going to confine it to the Courts? Show us a draft of the kind of thing you want".

To make sure somebody has an adequate standard of living, that would be a honey.

THE CHAIRMAN: Well, taxis will be at the front door momentarily, and you recall we are going to our Committee Room 3 in Parliament Buildings for lunch. Then we resume after lunch in the Cabinet Office board room.

--- Luncheon recess.





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A F T E R N O O N   S E S S I O N

--- On resuming at 2.15 p.m.

THE CHAIRMAN: Mr. Prime Minister, Gentlemen. During the last few months and since we last had a meeting of this kind, we have advanced our studies some way. With the immediate urgency of the financial negotiations behind us, we have been turning our attention more to the other two sub-committees and the other two areas that have interested us - the constitutional and the cultural; and in particular, constitutionally, looking at this in a very broad frame of reference, which I think conformed more to your own thinking, taking a good look at the way that Canadian federalism is evolving at the present time and trying to develop some guidelines that would seem appropriate for advice to your Government.

We have made arrangements for the second weekend in January for a meeting to be held under the sponsorship of Professor Burns and the Institute of Inter-Governmental Relations at Queen's University. This meeting is going to be a private meeting to which members of this Committee will be invited and some senior civil servants in this Government and counterparts (such as they are) from the Province of Quebec.

This is something that Mr. Claude Morin



and I have talked about for some time, and in particular we received a strong welcome to this suggestion among the Quebec officials. We feel that there are a number of matters we can discuss to our mutual benefit and that we may from that develop some further thinking and some further advice.

The present intention then is to try and develop some positions arising out of the considerable amount of work we now have in hand, and to try and sit back and pull all of this work together with a view to seeing what things are now appropriate for attention.

I know that last month you, sir, said to me that you would like an opportunity to discuss the picture in general, and particularly some of the constitutional questions, as questions of the structure of federalism that may come up within the next year; and then your own suggestion about there being a conference or a series of conferences to address itself to the problems of confederation as suggested; that we should be preparing to provide suggestions for that and any help or any role that this Committee might play in supporting such meetings and in preparing for it.

We did finally propose that there is a paper which was put forward by three Quebec unions which received a good reception across the country.



We are not interested in this paper as such or the group it represents, but rather because it provided a suitable agenda of points of consideration.

Taking these points of consideration, we thought we might, if this suits your purpose, address our attention to it this afternoon from the viewpoint of our three sub-committees in turn. However, perhaps there are some matters you would care to raise yourself or your colleagues would care to raise.

HON. MR. ROBARTS: I would be quite happy to proceed on the basis that you have indicated. What I want really to do is to get into the general discussion of some of these things and get some of the ideas that you may have as to where we are going.

The situation as I see it is completely and absolutely fluid. We may not be any place on a national basis, that is, nothing is scheduled, and no further conferences have been arranged. It may be that we shall have to take the initiative if we decide, as a government, so to do.

I was interested in getting some of the general ideas that you gentlemen might have after all the work you have done, to perhaps give us some guidance as to where we are going.

THE CHAIRMAN: As you know, this Committee did not attempt to think on everything as a





Committee, and indeed it would be impossible for me on any occasion to represent what the Committee's thinking is as a Committee.

Perhaps before we look at some of the details of this agenda, there may be matters which members of the Committee wish to bring up that they feel to be matters that commend themselves to immediate attention.

HON. MR. ROBARTS: I would say I am not speaking for my colleagues in the Government here. Arthur, do you have some ---

HON. MR. WISHART: I think you have expressed my views on the matter. I came here more to listen today and see how ideas I now have fit into the discussion that is taking place.

THE CHAIRMAN: There is one particular item which I might ask Mr. Seguin if he would care to say a word or two about.

We have a paper, at least a memorandum, from Professor Fox which describes the background of the present Estates General movement in the Province of Quebec, which is something that appears to have received the blessing at least of Mr. Johnson. I know that Mr. Seguin has some information on developments leading to their meeting this weekend.

MR. SEGUIN: Next weekend, 26th and 27th, in Montreal. Those that have seen the newspapers have seen that it consists of about sixteen hundred



persons that are invited to this meeting. They have been chosen as ten for counties in the Province of Quebec through election choice, or what-have-you. There might be all kinds of people that have been chosen. I know that there are at the present time something like seventy-two mayors. Paul had the statistics and I haven't got them at hand now. They invited three hundred from the English-speaking provinces. In Ontario we had a representation of a hundred and fifty.

Now, when we were invited to the Estates General, our first line was that we were not going because we felt that too many at the executive of the organization were separatists, and that we did not want to be involved into a separatists movement over a period of two days.

Well, as a result, when we first gave them our refusal, they sent four of their executive out to meet us in Ottawa, that is, my own Association, and we discussed for approximately six hours the Estates General generally, and what would be discussed at the first meeting which is next weekend.

We came to the conclusion that we would attend, but we would, immediately upon the opening of the meeting, give our position that if it turned out to be a separatist meeting, we would just leave the meeting immediately. We were assured that it would not be, but that it would consist of committee





work.

They have divided the group into something like forty committees, to which the minorities are to be spread around, and that it will only be discussion and committee reports which will be made on the Sunday afternoon, and then these committee reports will be studied for a future meeting in the month of March.

Now, you are right that the Province of Quebec is footing the bill for this, but in an indirect way through the Conseil de Vie Francaise. We in Ontario are getting \$12,000 to send our one hundred and fifty delegates.

Now, as you also see, Mr. Johnson was in favour of the Estates General; I think, more or less to get the feeling of the population of the Province of Quebec, as a way of knowing if he should call in the future an "assemblée constituante" as he calls it.

Until next week I have nothing more to report now.

HON. MR. ROBARTS: When is the meeting, Roget?

MR. SEGUIN: Next Saturday and Sunday, the 26th and 27th, and it takes place at the University of Montreal.

We have, I may say, already prepared our brief on our position and what we think they should



do in the present crisis; that there should not be separation, nor should it become an independent nation or an associate nation or whatever; that the status quo should remain and that certain concessions could be made to Quebec in view of its nature, but that is all. That has been approved by the full minorities of the whole of Canada, not only Ontario but the other provinces.

MR. STEVENSON: Mr. Chairman, could I ask Mr. Seguin if the invitation to Ontario to send delegates went directly through your Association, Mr. Seguin, or did it go through ---

MR. SEGUIN: It came to mine, because mine is the group to which there are thirteen other affiliates.

MR. STEVENSON: So it is really up to your Association to choose delegates.

MR. SEGUIN: No, we could have, but we did not do it that way. We did it in a democratic way. We sent so many invitations to our affiliates - the School Trustees, Teachers, Credit Unions, Federation of Women and so on. Then we picked three from the staff of the universities and three students for the two universities, Sudbury and Ottawa. We picked three doctors, three lawyers, three engineers, three architects, throughout the province.

PROF. CONWAY: May I ask Mr. Seguin what



is the attitude of the Provincial Government of Quebec?

MR. SEGUIN: That I cannot tell you, I do not know.

PROF. CONWAY: The initiative came from ---

MR. SEGUIN: The initiative came from St. Jean Baptiste, and then St. Jean Baptiste lost it from the fact that there was too much friction, and it passed to another independent body of men, Morin and others.

PROF. CONWAY: But it has not any official support at all?

MR. SEGUIN: No.

PROF. MEISEL: Mr. Johnson has supported it in a speech.

MR. SEGUIN: Oh, yes, he has supported it in a speech and he supported it financially.

Now, I may say that these three unions wish to see us there. They have made the point that they did not say all the minorities should be there to do anything about the future of Quebec, and if we were to attend there we were not to have any vote. We appealed on the vote question and we have full vote now, full voting rights.

PROF. McWHINNEY: Is New Brunswick sending any?

MR. SEGUIN: Yes, except Newfoundland where there is no association, every province.





PROF. McWHINNEY: The New Brunswick group will be larger than yours, then?

MR. SEGUIN: Oh, no. There are three hundred now, and my group is one hundred and fifty.

DEAN DILLION: Is this three hundred included in the sixteen hundred, or in other words, this is three hundred to thirteen hundred?

MR. SEGUIN: To thirteen hundred.

THE CHAIRMAN: One thing we understand is that Mr. Johnson has certainly appeared to be interested in the outcome of this meeting and in conjunction with the effort he has been making, I understand, to revitalize their committee on the constitution.

This, sir, raises a question that has been brought to me on several occasions and on which there has been some discussion in the Committee. It is in terms of your own thinking about what is required now; whether your thinking is in terms of an immediate constitutional confrontation, if necessary, or whether your thinking is in broader terms for the immediate future.

HON. MR. ROBARTS: What I have attempted to say - whether I said it or not, whether it is understood is another question - I do not think you can even begin to think of amending the constitution until you decide what you want to amend.

In other words, as I have said many times,



I do not believe we can sit down and say: "That is the end of the British North America Act. We will now write a new constitution". That is not in my thinking.

We have taken the attitude, as a province, even though we seem relatively content to live with the British North America Act as it exists, if it is necessary to alter to accommodate somebody else in Canada, i.e. Quebec, who feel more strongly about it, we are quite prepared to sit down and discuss it; but it seems to us and the Government that before you can decide what portions of the constitution you are going to alter, you have to decide where you agree and where you disagree; what can be done to accommodate Quebec on things which may not require any constitutional change at all; things that can be done as a matter of administrative practice, such as the whole area of education; things that can be done by a government without ever touching it.

My thought was that in order to establish these areas of agreement and disagreement, it would be necessary to sit down and talk about them.

So far the discussion has taken place between parties through the newspapers. There has been no discussion among the provinces. I have not the vaguest idea how Alberta might feel about some of these things vis-a-vis us or vis-a-vis Quebec.





It seems to me that the place to start, having settled the fiscal problems for a couple of years, even though we are not content, nonetheless we have the finality of the settlement so that we can move that over and keep it out of this discussion, as far as you can ever keep the finances of the state out of all relations within the state. At least we have settled that matter for a couple of years and it is not presently under immediate scrutiny and attention. Perhaps in the next two years we can devote ourselves to this problem if it appears to be necessary. Now, this is not too far off, I would think, what might come out of this meeting next week in Montreal.

MR. SEGUIN: The main reason that we are attending, sir, is the fact that we want to represent these people, and we thought it was a good way by the minorities going there and giving our own feelings of what we think of separatism and separate nations. That is the reason. Otherwise we would not be going. We have consulted with all of the provinces except Newfoundland, as I said, where there is no organizational set-up whatever, and they all agreed with us to go on that basis.

PROF. FOX: Mr. Chairman, the point I raised in my study of this question of the Estates General was the question of the extent to which the organizers of it have been able to reach a new



clientele in the community; that the discussions in Quebec to date on prospective changes in the constitution have been mainly confined to the intellectuals and to a few other groups.

By means of this Estates General, I think that the organizers are trying to reach a group that probably felt left out of the Lesage revolution. This is the point I make in this study. The persons in more modest positions in the hinterland, the local Town Councillors, School Board representatives and so on. We have in the paper a breakdown of who the persons are, if you like to look at it, and it is pretty representative of that segment of society.

I drew out of this the conclusion that whatever comes out of this meeting, it is significant in that it has awakened the interest of about, it is estimated, 17,000 people to date who have attended the organizational meeting to elect delegates to go and they have discussed some of the points that are to be raised at these preliminary meetings. It has interested this group in the future of Quebec in constitutional and other affairs.

The second point I make on the basis of study is that there is a strong disposition among certain elements in it towards separatism. I think this is pretty evident from the persons who have organized it.



Personally I am glad to see Roget's group going, because I think this will be a moderating force.

The third point is that this group that this has an appeal to, is a group that Mr. Johnson is interested in, I think, for electoral reasons. It is a group that his support is based on in the last election, and I am sure this is one reason why he is interested in what Estates General does.

Therefore I assume he has given it the blessing of the Quebec Government and encouraged this group, because he can see it might lead to something that is to his advantage politically.

Now, this raises the question, I think, for the attention of this Committee, in view of your remarks, on the question of what we ought to be doing about thinking of the constitution, how we ought to proceed.

We have done a lot of work in this Committee on a number of topics associated with this general problem, but is something additional needed? Would it be in your interests, for instance, to have us bear down as a group of students on certain specific problems, taking our cue from issues that seem significant because they are raised by Quebec and therefore become points of controversy?

Would you prefer to see us move out towards the public more than we have in the past? I am not





proposing this; I am asking whether you think that would be advantageous. Then we would become more like the Quebec Legislative Committee, asking for submissions from interested people.

Should we go on to try to discover what groups in Quebec are thinking, by our meetings such as that proposed in January?

In other words, what is your reaction to how we might usefully serve you in assessing the problem and dealing with it?

HON. MR. ROBARTS: Have you asked me to answer this?

PROF. FOX: I think it might be useful. I think some members feel it would be useful if we had some sense of direction from you on this because, of course, we could turn in several directions.

HON. MR. ROBARTS: I would not really answer this question forthwith. I would really want to think about it, because it has quite broad implications.

PROF. FOX: I assume it would be very useful to you, though, if we went on with our specific ideas on some of these problems, such as the suggestions that arise from this brief of the three unions in Quebec. Some of these, I think, we feel would require a good deal more study of the implications than we have given them heretofore.



PROF. CREIGHTON: It seems to me that Professor Fox is re-introducing a problem which I thought we had discussed before and for the moment had settled. We recorded, I think, that it is ill-advised to proceed in a different direction as a Committee which offers advice to this Provincial Government; that it is not a public body and does not meet the public directly. If that is to be the case, then of course I should think that the entire character of this body changes. Surely we have been over this again and again.

THE CHAIRMAN: I think that is right, Professor Creighton. I think probably there is a slight shift in what Paul is suggesting in this sense, that it is now a matter of whether we want to take the quite considerable amount of material and study we have done and fortify it in any way prior to presenting a list of things that the Ontario Government might consider as policy recommendations or positions it might want to take; or whether we attempt to assess what is going on in Quebec and elsewhere and attempt to form conclusions or reactions to that. I feel, Paul, you probably were not suggesting the question we have been over before.

PROF. FOX: No, no.

PROF. CREIGHTON: We would become a B and B Commission.





PROF. FOX: Oh, no.

THE CHAIRMAN: But rather how we fill out some of the corners of this material in a full way.

HON. MR. ROBARTS: I think the way we also want you to serve us is to see where the work that you have done is going in practical application as the Government moves on to whatever position it is going to move on to - an Irish way of putting it.

PROF. FOX: I think we should look forward to preparing a memorandum for you of considerable length on a number of these topics. Would that be useful?

HON. MR. ROBARTS: I think it would, yes. If we were to pursue this, I think that sooner or later in one form or another, we are going to meet with the other provinces and with probably the Federal Government.

The immediate question comes up as to what would the agenda of such a meeting be? It may fall to us to take the initiative in order to call such a meeting, if this is what we decide to do. This, I must admit, has occurred to me.

If this is a valid approach that we put forward, then in a practical way, how do you go about doing exactly that? Where are the areas of agreement and disagreement? How are we going to



get into them.

THE CHAIRMAN: If you were to decide, sir, that the best way to get into this - and indeed the best service that could be made to the public and to the issue at that time - were for the Government of Ontario to initiate such a conference, then I think this Committee could certainly then have a focus for its work in terms of proposed agenda.

HON. MR. ROBARTS: That is where it would focus. The things you have done to date, would they have some real practical application in drawing conclusions and leading into certain courses of action.

DR. FORSEY: We would have to sit around the clock for several days at least to bring things together in concise form for the information of the Government.

THE CHAIRMAN: We would have a lot of work, but we would also have an immediate incentive to meet, I think.

DEAN DILLON: Mr. Chairman, I was wondering whether the Premier would be interested in a study and report on the proposition that we might take the initiative in some kind of Estates General for English Canada.

PROF. McWHINNEY: That is actually not such an original suggestion. There are two things



that are very interesting with the Estates General. The first thing is that on the television programme anyway in the public interviews the leaders state that they are not there to recommend specific solutions; they are there to identify options and to clarify the means and procedures for giving effect to these options if they are decided upon by the political arm. This has been repeated a number of times and it is very interesting in itself.

The second statement is that the Estates General of Quebec envisages that having a dialogue with other sections of Canada. In an interview earlier this week, the president of the Estates General said he hoped that Ontario would set up a similar body, so that they could have mutual dialogues. I do not suggest we should adopt their suggestion, but it is very interesting in terms of that body.

It seems to me that it has shifted from what apparently was an original conception of coming up with a programme, to in effect something like a fact-finding body gathering information, alternative possibilities, and much more like a debating chamber perhaps than a decision-making body.

Certainly it would be conceivable that it could meet with an appropriate organization here.

Of course the third factor I should put that Premier Johnson himself (I think you referred





to this, Roget) Premier Johnson himself has given a sort of imprimatur to the Estates General.

I think it was probably originally prompted by strictly politics, because the leaders in it have been in urban intellectuals, in whose support, of course, Premier Johnson is weakest, but he has made a very definite bid to them.

He interviewed or had the President of Estates General into his office two weeks ago and they had a very long meeting, and he indicated that if his reform for abolishing the Upper House of Quebec goes through, he will replace it by what he called a constituent assembly and constituted in much the same lines as the Estates General, and he recommends the Estates General then to dissolve.

It was a very interesting example of an organization starting up for other reasons, in a way being taken over by Premier Johnson.

DR. FORSEY: Mr. Chairman, may I suggest that we are in danger of having this whole thing get away from us, going around and around in this way without going into anything very definite.

I would like to get back to the suggestion with which we opened, and that is on the agenda that we have before us, that we deal with it, the triple brief of the three bodies from Quebec, not because it is a product of genius or because the people concerned are of vast importance, but simply because



in my judgment it contains an immense number of the problems that will come up in any consideration of questions such as we have been touching on. If we tackle these one by one, clause by clause, we shall be able to give the Premier and his colleagues a much better idea of the kind of thing that is in our minds on very specific questions. I suggest that we get down to this now and get down to brass tacks.

THE CHAIRMAN: I think probably the time has come to get down to that. Perhaps this is the best way to lead back to some resolution of procedure. We were going to work through this bit by bit through the medium of our three sub-committee chairmen. Dean Lederman, would you be good enough to lead off on the first part.

DEAN LEDERMAN: Mr. Chairman, I should preface my remarks by saying that any opinions that I give as I comment on the first of the new dispositions here, are my own. We have not had conference on this subject, and I think our experience has been that differences often appear from among us and remain. I do not think that we are the type of committee that comes readily to a consensus, though there are many things on which we can agree. When I speak, I speak with the idea in mind that at least one of our duties to the Prime Minister and his colleagues is to reveal as wide a spectrum of ideas and thinking on this





occasion as we can do.

The thing that strikes me in general about this brief is that at least it rejects the worst alternatives - separation, complete independence. It also speaks unkindly of the status quo, which I happen to favour.

PROF. CREIGHTON: It does more than speak unfavorably about it, if I can interject, Mr. Chairman. It says in effect that if you advocate the status quo you are doing Canada a disservice, which I take to be pretty strong language, with which I am very much in disagreement.

DEAN LEDERMAN: As I say, I favour the status quo myself, perhaps with modifications that do not damage it too much.

The option for which the brief seems to elect for the most part is some reform or change on the level of our federal institutions which makes Canada at the federal level more of a bicultural and bilingual country.

Well, I think perhaps the best thing to do is to turn to page 9 and start with the so-called new dispositions. This is the outline of the new federalism which they say they favour, and the first of these speaks of:

"a declaration of fundamental liberties  
 "and rights, applicable to all citizens,  
 "in all provinces, including notably a



"statement of educational and religious  
"rights, as well as the affirmation of  
"the right of all citizens to a sufficient  
"and suitable standard of living, as  
"well as an unequivocal affirmation of  
"the right to work for all citizens  
"desirous and capable of working."

Well, that is a pretty large order, and I would just draw attention to two or three things about it. In the first place, in the section I did not quote there, it calls quite plainly for a special entrenchment. This is not to be an ordinary statute of the Federal Parliament like the present Canadian Bill of Rights; it is to be part of the entrenched clauses of the constitution, which could not be touched by way of alteration except with the extraordinary amending procedure. It would be well beyond the role of ordinary statutes.

Well, as soon as you do that, you are effecting a shift in the functions of your basic governmental institutions from the Legislature to the Courts. For instance, let us use the illustration that I used this morning. If you think in terms of freedom of speech (it is not one they mention incidentally) the present proposed amendment concerning hate literature that is being considered in Parliament at the present time is concerned with where the line is to be between



freedom and restriction. Under our present system this will be worked out by the Supreme Court of Canada by legislative process.

If this were being dealt with in the United States, no doubt it might start in a legislative body, one of the State Legislatures. This might be exactly the same issue and come to exactly the same draft of a statute, but then anyone who did not like it could challenge it under the Bill of Rights before the Courts, eventually before the Supreme Court, and the Supreme Court would have the last word on whether this was valid legislation or whether it offended the Bill of Rights.

So there you have the powers of any legislative body by ordinary statute. In other words, the last word would be shifted from the legislative body to the Courts.

Now, I am not at the moment saying whether that is good or bad. I am saying that is what you are doing when you have a specially entrenched Bill of Rights.

The second point I would make is that the things that are mentioned here by the three unions, education and religious rights, sufficient standard of living, right to work - these are very complex things. The usual recitation which you get - well, religious rights are here, but usually this kind of statement concentrates on the political and personal





freedoms - due process before the Courts, fair trial - the political freedoms, the freedom of speech and assembly and association. Now, freedom of speech, assembly and association and due process before the Courts, these are amenable to judicial proof and it may be you might need to have High Courts with the last word on these things; but when you talk about the right to education, the right to an educational system that does certain things for you, you are talking about a very complex organization that has to be planned, controlled, developed, organized, financed, in a very complex way; and I do not see how a Court can do much for a citizen who says the educational system is not functioning to his satisfaction. There may be particular points on which the Courts can do something for them.

Of course, again, if one looks at the United States, you see that the Supreme Court has taken quite a hand in directing that educational systems shall be developed in a certain way, and that public funds devoted to them shall only be spent for a particular purpose.

As for the "sufficient and suitable standard of living", you are raising all the issues of the welfare state there; how the state can be organized to ensure a minimum standard for all persons who have suffered some kind of misfortune - excessive age, unemployment, illness, widowhood and so on. Again, I do not see that a Court is<sup>a</sup> very



appropriate instrument for having much to do with what is required there.

In the right to work is the whole issue of full employment and your economic viability.

DR. FORSEY: And might also involve the whole question of union shops, union security, and a variety of other things. The phrase "right to work" is a very slippery and ambiguous one.

DEAN LEDERMAN: That is the heading under which a number of states of the United States had attacked union shop.

DR. FORSEY: Precisely.

DEAN LEDERMAN: It is a double-edged sword. Of course, historically in the United States the due process clause and the equal protection of the laws clause were used, I think I am right, Ted, and not long ago, either, to strike down workmen's compensation laws.

PROF. McWHINNEY: Yes, until 1937.

DEAN LEDERMAN: These were laws without fault and which you were operating without fault, to enact Workmen's Compensation law, and maximum hours of work laws were struck down as violating freedom of contract. These things can be double-edged swords.

My preference would be for a Bill of Rights which is restricted to the personal, political rights. These are manageable by judicial standards and Courts can protect those things.





If you protect the political and personal rights and in effect protect your democracy, then the people with their franchise and their right of association and right of free speech, they can go forward to take the measures which they can to satisfy themselves in other respects.

I think the proper scope of specially entrenched Bill of Rights is the political and personal rights which are not mentioned here; and really, with all due respect to the trade unions, they are expecting something here of a general declaration which you really cannot do, and I am afraid a lot of disillusionment would set in as this realization dawned. I think probably I had better stop there at this point.

PROF. CREIGHTON: Is there any one which is really valid, except the religious right, which I assume means liberty of religion or something of that kind?

PROF. BRADY: This can be protected.

PROF. CREIGHTON: Apart from that, the rest of them are quite invalid really and quite unsusceptible of protection that way.

DR. FORSEY: It depends what you mean by "equal" again. You have here three sets of things. First of all the kind of thing that you can say in the American Bill of Rights, which we ordinarily refer to as fundamental labour rights, the kind of



thing that Dean Lederman has just been speaking of.

Secondly, something rather special for this country, educational and religious rights, which I took to mean something like the thing you have in 93 of the British North America Act now, extended so that it would apply not merely to the Protestant and Roman Catholic minorities of the Queen's subjects, but possibly to French-speaking and English-speaking minorities, something of that sort. My guess is that the union people who are responsible for putting this in here were thinking of something like that. Whether that could be adequately protected by the Courts seems very doubtful.

Then of course, you can protect the status quo by means of the Courts as in the settlement of Newfoundland. The very odd educational system in Newfoundland is completely frozen for all practical purposes in the hands of the Courts. It might be this would require some special termination.

The sort of thing involved here is what you get from the Left Wing <sup>in Quebec</sup> /- and I do not mean by that Communists. The right to a suitable standard of living, I agree entirely with Dean Lederman, simply cannot be protected by any kind of Bill of Rights whatever.

PROF. McIVOR: These economic rights, it seems to me, are quite inappropriate to be included



in a bill of this kind. I suppose for want of a better term you might call them quantitative rights, and I think they are completely beyond the ability of any Court to guarantee, and therefore, would tend to discredit the whole effectiveness of any Bill of Rights.

We talk about "sufficient and suitable standard of living". The general interpretation of what is a sufficient or adequate standard of living is, I think, provided by notions of social justice and so on, and its objective definition is simply impossible.

Similarly, guaranteeing the right to work for all citizens, this is a commendable enough objective, but I think in the nature of our economic problems it is simply impossible to guarantee that this right could be in effect maintained at all.

DR. FORSEY: You might as well put in a guarantee of perfect health for all citizens.

PROF. McIVOR: That is right. These are all desirable objectives, but they are simply in the nature of the working of the economy, not the type of rights that can be guaranteed under all circumstances. This being the case, I think they are quite inappropriate to come under the jurisdiction of the Courts which in the end would be responsible for enforcing this quantitative type of right as I have called it. It is particularly inappropriate





in an instrument of this kind.

PROF. MEISEL: Mr. Chairman, I agree with all the things that have been said about the difficulties of guaranteeing, in fact the impossibility of guaranteeing effectively some of these things like the right to work and suitable standard of living.

I think at the same time we ought to take this clause seriously in this sense, that we are looking here at a brief presented by three pretty responsible organizations in French Canada, and a brief which on several occasions insists that the proper approach is an empirical approach rather than an airy-fairy sort of theoretical approach.

Nevertheless, despite all this, these people have felt it necessary to ask for this kind of statement of principle to be enshrined in the constitution, and I think we should note these things, whether it is compatible with the kind of approach that we would want to adopt. I think we must recognize that in any kind of discussion between the various provinces they will have to take into account the particular political style that is dominant in French Canada, and that style is different from that which prevails outside.

If, for instance, the moment arrives when these things are actually being discussed between representatives of, say, French Canada and the other



provinces, then it may be necessary for Ontario, for example, to say: "Well, it is very difficult to put these statements of principle into an enshrined section of the constitution, but could we perhaps do something else? Could we all agree on our statement of aims which, while not given this kind of constitutional validity, at least express some of the kind of goals towards which we want to move?".

DR. FORSEY: Preamble.

PROF. MEISEL: That kind of thing. You can put in legislation dealing with discrimination. There has been a long standing assumption that you can legislate discrimination out of existence. Obviously you cannot. But prominent people have agreed that it is probably worth while putting the sort of best intentions of the community in a document which sits there and towards which one moves, but which does not have the same kind of constitutional validity perhaps as some other things.

I think we ought perhaps to keep in mind, as we think about ultimate discussions with various spokesmen from French Canada, that we might have to try to work out this kind of preamble, or whatever, which would at least get us together on the statement of our best intentions.

DR. FORSEY: Put in a preamble, sort of "Hurrah for God, virtue and motherhood".





PROF. McWHINNEY: I think you might be more concrete than that. That these things should be in constitutions is obviously a matter of political, social choice, but the fact is that in post-World War II constitutions of Europe you do put these things more concretely expressed than this and you have Court decisions on them. So if you go in and say you cannot put them in a constitution, you are going to get footnotes back and Court decisions. I think you are very right, John, to remind us it is a very different constitutional tradition, and you do find it in the Continental European civil law.

One of the interesting things in the Quebec line on this is that the footnotes are in. People read the decisions of some of the European Courts in proceedings such as this.

At the same time, as Eugene and others remind us, and you particularly, Bill, that it is a two-edged sword; that the right to work can be used, for example, as an anti-labour measure as well as a pro-labour measure. However, it is a fact that it is the current tendency to put these things in constitutions, that there is a great deal of political popularity in it, and I suspect the thrust of our discussion perhaps had better be in deciding what are, in terms of our society, the essential ways to frame social and economic demands of this



sort. If one simply says they do not belong in constitutions, you are going to get the answer back: "Well, they are in constitutions and they do work".

What we really want to be sure of is that the right to work prevails and will not be used in some way that will be unacceptable, but I think the time is past where you can say these things are constitutionally invalid per se.

DR. FORSEY: If you drew up anything on the right to work, these johnnies would be the first people to shy away from it and say: "Good gracious, we don't want to get into that situation".

PROF. McWHINNEY: The Quebec labour people might but not necessarily, for example, the majority of the members of the Estates General.

DR. FORSEY: But the labour people, you might find suddenly that the Quebec trade union people were trade unionists first and Quebecers second.

PROF. McWHINNEY: There is a good deal of sophistication though, of comparative constitutional law in current Quebec demands in this sense. I agree there is a lack of clarity sometimes of purpose, because quite obviously conflicting interests within Quebec have been brought together behind one formula, and we are right to say this needs refinement of administration; but in the social, economic sphere, I suggest we may have to accept that if there is ever



an entrenched Bill of Rights, people will demand declarations here and that it would be politically popular in this province.

DR. FORSEY: How does the Court decide in Europe what is a sufficient and suitable standard of living?

PROF. McWHINNEY: This is what we call a standard in legal terms, constitutional terms, standard type of provision. The only way you meet it is on the factual reference, based on factual evidence by both sides. You have this in even United States constitutions. If the Court likes to agree, they will have changing content. Whether it is constitutional itself is another matter, but it is not novel in terms of constitutional drafting.

PROF. McIVOR: Ted suggests we should be careful about saying that one cannot put in a constitution such provisions.

PROF. McWHINNEY: Yes.

PROF. McIVOR: I do not think we are arguing we cannot put in such a provision, but the question is the wisdom of putting any such provision. Then you go on and say it appears in European states and even enforced by Courts of law; but I would be hard pressed to point to any example of a country where the problem of unemployment has been eliminated simply because a Court of law says it must be.

PROF. McWHINNEY: Nobody suggested that.





I think there is a non sequitur now. I think you have to ask what does the right to work mean?

Is it a guarantee against closed shop or is it a guarantee against compulsory unionism, or is it a pious affirmation there is to be full employment?

This seems to me to be a legitimate function, and similar types of provisions exist in Europe with rather different philosophies. For example, you have got this concept in the German Supreme Court of the free market economy.

I think, in other words, the right thrust should be to simply point out that these phrases need definition; that we ourselves, it seems to me, should have nothing against putting social and economic interests as such into the constitution, but one wishes to know what the phrases cover.

DEAN LEDERMAN: The difficulty is that in looking at the national system, it takes five hundred pages of the statute book to spell it out.

THE CHAIRMAN: There is one matter of practice I would like to raise, and that is point (ii) on page 10. I am not sure I understand the sequence that "fundamental liberties and rights being thus protected, we could, without any inconvenience, reduce the preponderant place of the Federal Government in certain fields". I do not understand that first part.

PROF. CREIGHTON: Part of the muddled



thinking of these members.

DR. FORSEY: My guess is what they are driving at, they want to get rid of the powers of reservation and disallowance.

THE CHAIRMAN: Is it not though, an odd way of going about it?

DR. FORSEY: No, I think the reply has been made by some people to whom they have talked: "Well, you know, this can be used to protect fundamental liberties and rights. They have not been in general, but they could". But if you protect your fundamental liberties and rights by Bill of Rights, the only legitimate ground for disallowance and reservation of provincial bills disappears, because they are not interested in the traditional reasons for disallowance and reservation. They are interested in what we might call the John Diefenbaker reasons. He once in the House, though he ran away from it, he once suggested what others have suggested, that the power of disallowance could be used to protect fundamental human rights against invasion by provincial legislation. I think that is what they are driving at here, but it is not quite as polished.

PROF. FOX: It was argued seriously in the padlock law case in Quebec.

DR. FORSEY: That is what they are driving at. The last reasonable ground for disallowance





disappears, so cut it out.

THE CHAIRMAN: This is the point, though, that we went over, it seems to me, at some length when we were preparing to bring in a resolution on the Supreme Court. Did we not have some difficulty about this?

PROF. McWHINNEY: Not about disallowance.

DEAN LEDERMAN: Not about disallowance and reservation.

PROF. McWHINNEY: We accepted the principle, and I think it is very important in terms of western constitutional jurisprudence. On the whole we are rather happy with the Bill of Rights interpreted by the Courts, but I understand the main thrust of our Committee really was to preserve the Court, wasn't that it?

DEAN LEDERMAN: Yes, we did not get into this issue particularly at that time.

PROF. McWHINNEY: We wanted to preserve the Supreme Court. The Committee recognized essentially the very positive function of the Court implementing civil liberty constitutional rights.

THE CHAIRMAN: You recall this part was dropped. There was a four-point resolution which was reduced.

DEAN LEDERMAN: I remember what occurred, yes.

DR. FORSEY: There was nothing in there



about this at all that I can recall. Personally I think the powers of reservation and disallowance are now so completely moribund it is not worth while making a row about them.

MR. MAGONE: Generally set forth matters and the protection of civil rights was a constitutional matter.

PROF. McWHINNEY: We said the Court itself must decide the jurisdictional issue.

DEAN LEDERMAN: We were concerned with the problem of what you might call legal aid, a litigant who was claiming the protection of the constitution and faced the problem of going all the way through the Courts. We were worried about that problem, and we were approaching the question of protecting fundamental rights judicially for all political and personal rights and rights of due process in American courts; we were thinking of that in relation to the Supreme Court of the United States and Quebec, if my recollection is correct on that score.

DR. FORSEY: On a matter of fundamental liberty, you could get stuck in the province of Prince Edward Island, let us say, just because the chap wasn't able to go any farther and because the Supreme Court of Prince Edward Island said in effect: "This is not a fundamental right at all; it is merely a question of fact".

DEAN LEDERMAN: But the most appropriate



solution there is a decent system of legal aid for financing justifiable litigation where the litigant cannot finance it himself. Fortunately in Ontario we are in a good position in that regard now. We are about to lead the country with a good system.

DR. FORSEY: Also the other factor that we were a little afraid some cases might be regarded as civil rights in the narrow sense, and therefore matters that need not go to the Supreme Court of Ontario; it would appear it was not a fundamental right at all.

DEAN LEDERMAN: This is when we were only discussing the question of whether you would stop all private law appeals with the Supreme Court, with the Court of Appeal of Quebec, and that only constitutional issues can go on to the Supreme Court of Canada.

The point we made, I think, was that this is all right provided the Supreme Court of Canada says what is a constitutional issue, because after all the Padlock case itself was an action to break a lease.

PROF. BRADY: I think, Mr. Chairman, this discussion and this particular clause served to illustrate the presence of too many <sup>legal doctrines</sup> or legal schools of thought.

Some years ago there was not much interest in Quebec on anything like a declaration of rights,





liberties. Are we to take this provision in the union's brief as illustrating something that is becoming very characteristic in the legal thinking of Quebec? If that is so, of course we have to be prepared or would have to be prepared to meet that position in any future discussions of the constitution.

I do not know the answer to that, but undoubtedly many of the intellectuals in Quebec have been influenced a good deal by European constitutional ideas and probably are carrying over something of that legal tradition into their discussion of these matters. This may not be a very well stated case of this legal position, but it is probably a reflection of thinking within the Quebec legal fraternity. I don't know whether you can answer that.

DEAN LEDERMAN: I think perhaps Mr. Seguin would know better. He appears before the Supreme Court and is in close touch with the Quebec profession. If anyone can speak to it, probably Mr. Seguin can.

MR. SEGUIN: The legal fraternity has not thought about it except with a few exceptions, a few lawyers. Some professors, yes, and others, but as a general topic the legal profession has not thought about it much.

PROF. McWHINNEY: We have generally in our



law schools though, criticized the Quebec approach to constitutional jurisprudence as being anti-civil libertarian. We know if you look at the form used by the Judges in the Ron Curelly and other cases, there is a good deal of evidence to start with. I would be sorry if we relegated, solely because of the lack of language, what strikes me as a very welcome constitutional initiative from Quebec.

I think the constitutional jurisprudence of the Court will benefit by having this, accepting and welcoming this Quebec emphasis. I would agree, though, in pointing out the worries we have with language, that certainly I attribute this incentive to the best of motives. A lot of people in Quebec are very unhappy about the Ron Curelly case and the way in effect some Quebec Judges voted in that. It is a very good sentiment and the constitutional jurisprudence generally would benefit by this sort of support.

DR. FORSEY: I would think if anything like that came before the conference from the Quebec people, they should be asked to produce a draft. I think this would very soon result in weeding out a good deal of nonsense and what would be left would probably be very valuable. I suspect this is very likely to come up, and I should not think Mr. Johnson is a great civil libertarian, but he may bring it up for quite other reasons.





It occurs to me also that it might not be a bad idea if it were possible for your department, Mr. Wishart, to try its hand, in any spare moments it has, at drafting some clause on this subject itself and saying what they thought might be the difficulties.

HON. MR. WISHART: That is something perhaps we might do.

I would like to say at this point that I favour very much Professor McWhinney's approach, his general attitude in this, because I think when we get into discussion with our confreres from Quebec, I do not think we can for a moment knock this down as something that we cannot tackle and we cannot somehow hope to frame and get some of these ideas forward, even perhaps as you suggest - you might almost call it preamble. I think we must go a considerable distance in meeting these ideas and try to frame them if we can. We will see what we can do to get some language together.

Perhaps your idea is better still, that we might ask them to say what it might be.

DR. FORSEY: It might not be a bad idea to get some of our lawyers working on this thing to see what kind of language they put it in.

PROF. McWHINNEY: The Ontario Bill of Rights, you know, is something we can give wider publicity to because of its very clear language, and



I suspect it would be acceptable in the classical political terms. I think it should be acceptable to the Quebec unions putting this forward.

PROF. McIVOR: I think, Mr. Chairman, though, that difficulties of language are only one part of the problem, and even if we assume difficulties of language have been cleared away, the basic problem still remains of putting guarantees into a Bill of Rights which are unworkable.

DR. FORSEY: They might be shoved off into a preamble where they would not have any force or effect. But the other things, it seems to me, if you get down to drafting something (I am not a lawyer so perhaps I should shut up) I would guess that if you get down to work to put something in precise legal language, you would, at a fairly early stage, discover that certain things could not be done and certain other things could be done, and you would clear away a lot of fluff in the process.

PROF. McWHINNEY: I think that the type of approach you suggest, Eugene, I think this would become both stimulating and<sup>a</sup>very constructive contribution to Canadian jurisprudence, to go along with the general idea of entrenching fundamental rights in the constitution; and I think it would lead into the next point, Bill, that the constitutional committee regarded as very fundamental, that the Supreme Court be not weakened, and the key to our



argument of the Supreme Court not to be weakened was that it was the fundamental protector of human rights.

MR.. MAGONE: Mr. Prime Minister, I said this morning and I think it bears repeating, that we have a Bill of Rights now put forward, as I suggested this morning, as a political gimmick by Mr. Diefenbaker. It does not mean anything more than we had under the law as it existed and as it exists today.

I think that what is suggested here is not only impossible of drafting, but I think it is unnecessary. I mean, we have a living constitution, we have evolution. A few years ago you never heard of such things as "contrary to natural justice". Now we have many cases that are decided on that point, and I do not know one case - although it has been cited many times - I do not know one case that has been decided on the present Bill of Rights. It has been mentioned but no decision has ever been made. I am subject to correction if any person wants to correct me, but I have not read one.

I think this kind of thing is quite unnecessary and not only that, we must remember that what is suggested here is going to Westminster and asking for constitutional amendment in the convention. That means the assent of all provinces and the Federal Government before going over there. Our





experience has been over thirty-five years or more that to get the consent of all provinces in a constitutional matter is a very difficult thing, particularly in a matter of this kind where you are giving away part of the legislative jurisdiction of the provinces - and how much I don't know - to the Federal Government.

THE CHAIRMAN: I do not want to curtail this in any way, but I am conscious that time is marching on. With your permission, I think we might go on, Bill, to other points.

DEAN LEDERMAN: Well, I think we did mention the matter of reservation and disallowance, Mr. Chairman. I think this power has fallen largely into disuse, not entirely, but I think there is nothing to linger over on point 2 there.

Point 3, I think the status of the Supreme Court of Canada is very important. What is stated here is what appears as the line that is taken in the Tremblay report from Quebec, speaking of the implications here, that we need a new tribunal charged with interpreting the constitution.

"This tribunal would not be the  
"creature of one of the interested  
"parties alone, but would be  
"constituted in such a manner as to  
"assure its impartiality with regard  
"to federal and provincial authorities."



The implication is that the Supreme Court of Canada is the creature of one of the interested parties, namely, the creature of the Federal Government, presumably because the appointing power rests with the Federal Government.

This is simply not so. It is true that the appointing power does rest with the Federal Government, but you have as much in the Supreme Court of Canada as you have in the provincial Superior Courts, the tradition of independence, our inherited English tradition of the independence of the Courts; and the Judges, once appointed, are completely cut off from the executive government. They take no instructions of any kind. There is not any suggestion or whisper of instructions going from the executive government to the Judges.

It seems to be taken for granted that the Judges, because they are appointed by the Federal Government, by the Governor-General in Council, would be under the influence of the Federal Government because this was the body that appointed them. This simply is not so and has not been so.

Now, if we are to make the situation appear any better, one could put the constitution of the Supreme Court of Canada, which is under the ordinary statutes of the Parliament of Canada, one could specially entrench this statute in the constitution. I think that could be done, but that





would not in itself change the appointing power. Someone has to appoint, and I find it difficult to think of how you are going to arrange a system whereby ten provinces can share in the appointing process for this particular Federal Court, the Supreme Court of Canada. There may be ways of doing it.

Perhaps if you are going to reform the Senate the way it is proposed according to some of the proposals for the reform of the Senate, you can move towards the American system of having a Senate judicial committee - they have to confirm the judicial appointments of the President. Perhaps we could move toward that kind of system. That may be what they are asking here, but it does not seem to have been thought through.

I simply do not accept the implication here that the Supreme Court of Canada is not a disinterested tribunal now. I think it is.

DR. FORSEY: May I say that in the first part of this document under the heading "Outline of the Causes of the Constitutional Conflict, Point 12", they quote the Tremblay Commission that in a Federal state it is inconceivable that the nomination of Judges to a constitutional court should be the exclusive prerogative of one of the interested parties. I do not believe they ever heard of the existence of the United States, but anyway they go on to say that



if you leave this thing in the hands of the Supreme Court, the constitution then for all practical purposes is being deprived of legal sanction, the whole system is in danger of being condemned. In other words, they have got it in good and hard for the Supreme Court as presently constituted, and you are likely to have a really knock-down and drag-out fight on this if the Provincial Government comes forward with this kind of proposal.

PROF. CREIGHTON: It is also referred to on page 2 of the introduction:

"Quebec has never approved of the  
 "Supreme Court as arbiter in  
 "constitutional disputes for the  
 "judges are appointees of one of the  
 "interested parties."

PROF. McWHINNEY: English nationalism, in one we get rid of the Privy Council, while French nationalism defends it.

DR. FORSEY: It is nonsense, because some of the people who are most anxious to get rid of it are people appointed by Mr. St. Laurent.

PROF. McWHINNEY: But certainly in the legal field, a lot of the impetus came certainly from the English-speaking legal profession.

PROF. CREIGHTON: You mean the defenders were the French?



PROF. McWHINNEY: You know this very well, Donald, because there are some of your colleagues in the law field very active leaders in this.

PROF. BRADY: Mr. Chairman, this may be nonsense, but certainly this idea is very prevalent in Quebec.

DR. FORSEY: Doesn't prevent it from being nonsense.

PROF. BRADY: I am only stressing the point that if there were constitutional conference at any time in the near future, there is no question that this idea would come up.

DR. FORSEY: That is what I said, knock-down and drag-out fight.

PROF. BRADY: Whether it was the Tremblay Report that tended to disseminate the information or not, it is very prevalent.

PROF. CREIGHTON: But we do not need the Estates General to inform us of this, Professor Brady. You appear to do it right now to us here, you have done so.

PROF. McWHINNEY: We were saying at lunch it had not been helped by the involvement of the Supreme Court in the Munsinger Report. I think it is very clear one has to be very careful about keeping the Judges of the Supreme Court out of political cause celebre.

It may be there is some constitutionally





harmless way, as you suggested, Bill, of somehow entrenching the Court or else putting the appointing power or the disposing power of their services on a more objective basis.

DEAN LEDERMAN: I did not mean to take an entirely intransigent position on this. If anything can be done to improve the impartial image of the Court or to improve its impartiality in fact, if that is needed, or if anything can be done to improve the appointing process, I would be quite happy to see these new things done, provided that improves the status of this Court as the superior judicial tribunal in the English tradition.

DR. FORSEY: But think of judges appointed by wacky Bennett and Joey Smallwood.

DEAN LEDERMAN: I suppose the next compromise, you might try two men or try to each have a judge,

MR. MAGONE: It could never satisfy litigants at least.

PROF. BRADY: I do not think you need to go that far. This has been suggested by some legal lights.

PROF. McWHINNEY: Canadian Bar Association.

PROF. BRADY: Costs for example. You might have a panel of people from whom appointments could be made. I think, in other words, we have not exhausted all the devices that might be employed



without impairing, as it were, the Supreme Court.

PROF. CREIGHTON: Panel of people chosen by whom?

DEAN LEDERMAN: This idea was brought of the nominating commission. This may be what Dr. Creighton refers to. It is very interesting. The idea came up first in relation to trying, in some of the American States, trying to remove judicial appointments there from the political realm, from the realm of elections and so on.

Perhaps there is something here that could be done that would both improve the quality of judicial appointments and in some cases give the provinces a hand in judicial appointments; if there were an official nominating commission composed and this commission had to give a panel of, say, ten names and the Governor-General in Council was restricted to appointing from that list of ten names. Then the Governor-General in Council still appoints, but is restricted to a list which comes to him from a commission. It may be somewhat like the boundary commissions. It could be a representative commission - Canadian Bar Association, Attorneys General, Deputy Attorneys General, official Law Societies, representatives of the lay public, this kind of thing. It is the sort of commission that could be composed to maintain a list from which judicial appointments had to be made.





With a commission putting together the critical list of eligible people, you could have provincial representation on such a commission.

I am not carrying any torch for this idea at the moment, because I have not thought it through to my own satisfaction, but this is the sort of thing that perhaps we ought to think about, the sort of thing that can be done.

DR. FORSEY: How far that would satisfy these people though, is quite another question.

PROF. McWHINNEY: But at least it would be, as you would concede, a very constructive response. I mean, you could improve the image of the impartiality by an order that no Supreme Court of Canada Judge accepts Royal Commissions. One understands that Chief Justice Taschereau has already adopted this unofficially.

DR. FORSEY: This has nothing to do with what they are asking here.

PROF. McWHINNEY: It seems to me a matter of tactics. One says: "If you want an impartial Court, we are with you one hundred per cent, and these are constructive suggestions we make".

DR. FORSEY: But what they are driving at is the whole opinion that Judges are delegates; that if somebody comes in there and he speaks French, then he is going to take one line on everything, and if he speaks English he is going to take another line



on everything and it is a foregone conclusion, linguistic determination, as it were, which seems to be just perfectly awful and nonsense.

THE CHAIRMAN: Bill, I wonder if we could move along.

DEAN LEDERMAN: The next proposition here is that certain material jurisprudence is declared to be under Federal jurisdiction, such as radio and television for example. Well, this, of course, refers to altering the actual distribution of power in this country. It has raised large issues. I think myself that radio and television ought to stand under Federal control. Once you start talking about concurrent jurisdiction, of course, you raise all the problems that come under the heading of Dominion paramouncy. As soon as you get two legislative authorities into the same legislative field, you have to rule about what happens in the event of conflict and who comes out on top in the event of conflict. I would not worry so much about concurrency in this field if the normal rules of Dominion paramouncy prevail for concurrent fields, but I am not sure that is what it means.

I think quite possibly what the unions are after here could be accomplished without any legislative change. There is no reason why the Federal authorities could not licence a provincial Crown corporation to do some broadcasting, educational



television or whatever it is, ~~that~~ a provincial government wants to do. I think what is wanted here can be done without constitutional change.

DR. FORSEY: May I put my car in again at this point? I think there is a bad translation here. They have translated it "certain material" - "certain matters".

I think the approach is important there, because they are giving merely one example, and I think this is the kind of thing you will find over and over again in proposals emanating from Quebec: You get a list of things and then you get "etc." or you get a list of things and then the remark that the list is far from being exhaustive. That is Mr. Gerin-Lajoie. Here you get:

"Certain matters that jurisprudence  
"has declared to be under Federal  
"jurisdiction should come under  
"joint control, such as ---"

and then they give this one example.

I would be very reluctant to put in the hands of any Provincial Government very much power over radio and television. It is all right if you have a good one, but, alas, we have had a great many very bad ones and not in one province only.

Then there is something that wants clearing up in the section of the brief. It may not be normally understood how the current - I suppose it





should be "concurrent" - jurisdiction should be exercised. Was it meant there to simply underline the problem, as Dean Lederman has mentioned, or is there something implied there about, for example, provincial paramouncy? This is the kind of thing on which I would be saying: "What do you mean? I want something more precise. You have given one example. All right, have you got some other things in mind and, if so, what are they? Secondly, you say it must be clearly understood how concurrent jurisdiction shall be exercised. Yes, we agree, but in what sense should it be clearly understood? Have you got in mind a specific proposal there? Are you suggesting that it ought to be primary, provincial paramouncy or are you suggesting that the Dominion would be paramount, because it makes a vast amount of difference."

You could have complete balkanization of the country if you had provincial paramouncy in radio and television in less time than it takes to tell. You could have all the "medieval German Princes" breaking up the country.

DEAN LEDERMAN: So much, for example, the allotment and election of channels is a matter of international treaty and agreement.

DR. FORSEY: Quite.

DEAN LEDERMAN: This almost dictates Federal jurisdiction in such matters.



DR. FORSEY: You have always to look and see what is in the five-sixths of the iceberg that are under the surface. There may not be anything under the surface, but over and over again you have to say: "Tell us exactly the kind of thing you have in mind. Be specific, be precise. Who is going to pay."

When we were at that conference in Banff, Andrew Stewart threw all the French Canadian delegates into the most active confusion, because he said: "Professor Morin apparently would put radio and television under Quebec jurisdiction". He said: "If you have in mind all networks, English and French networks across the country, it is going to cost a great deal of money. Who is going to pay?". Apparently this led Morin to set radio and television into his list of central subjects because there was complete unanimity among the French Canadian delegates, as expressed by Faribeu: "Quebec cannot pay. The Federal authority must pay".

Well, if you get down to brass tacks, you may very well find that even the most ardent provincialist would put some water in his provincial wine when he finds wine is going to cost him too much; and without dissenting voice Morin says, "Maitre Faribeu will state our position" and Maitre Faribeu wound up after a magnificent half hour



oration, by saying: "Quebec cannot pay. The Federal authority must pay" and that was that.

So I think this is one of the many reasons why you want to get precision on these things. If you do not get precision, nobody knows what is happening.

PROF. MEISEL: I have been wanting to make an observation on each of the points, always the same one.

THE CHAIRMAN: May as well get it off your chest.

PROF. MEISEL: It seems to me that in each case we are in the presence of some new way of doing things, and we and the rest of the country tends to respond essentially in one of two ways. Either we say: "No, this is not possible. It does not quite conform to what we used to do before. This is not in keeping with tradition, and so on, and we cannot do it". This is one reaction.

The other reaction is: "Why don't they say more specifically what they want and then we will react to it", which is the more positive of the two.

It seems to me, however, that there is a third response which touches very closely on the topic we opened up with this afternoon, namely what this Committee can do.

It seems to me if we are ever going to sit down and discuss some of these things in reasonably





concrete terms, it simply won't do for us to say:

"Tell us what you want and we will respond".

I think in a number of these cases we ought to undertake pretty serious and detailed studies, not only growing out of the conventions of our own traditions, but trying as much as we can to really integrate to some extent the kind of things that are emerging from the French Canadian position, and the kind of things that emerge from our own paths and try to work out alternative possibilities and look at them to see whether they are at all possible or not.

It may be in some cases we will say:

"This is utterly out of the question" or we might say: "This might be acceptable to Ontario, but it would never be acceptable to Alberta"; but unless we spend a great deal of time working out these concrete possibilities and the whole range of them on all of these issues, it will be too late officially to engage in some kind of conversation and then start planning a five year research project to look at all these things.

I think we have been too inactive on the whole in our approach, perhaps too serious, too responsible.

I think in some cases we really ought to try and look at the proposal not from the point of view of how this will disturb us, how we can reconcile what is intended, even though sometimes it



is badly stated or it is unreasonable - how we reconcile this as the kind of thing we might be willing to try or that we might be compelled to try.

It may be -- I think we discussed it before -- it may be that we look at this very carefully and we find in the end it is not worth the effort, but we cannot make that decision until we know what it would cost us to make this effort.

I think we ought to examine these things with a more open mind than we tend to, and I think this applies to every one of these new dispositions (so called) that this brief presents.

DR. FORSEY: Yes, but up to a point, you know, because if you take them literally you are going to have a roving commission on everything under the sun.

It seems to me you have got to start off by saying: "It looks like the kind of thing they are driving at is so and so. Therefore we had better concentrate on seeing what we can do about this"; but this may also involve the process of saying: "We are not quite sure what you mean here. Would you tell us a little more about what you mean so that we will have some information of what we can base things on". Otherwise, the Premier says: "Give us a lot of alternative suggestions" and you are faced with an absolute infinity of choices.



PROF. MEISEL: I think we ought to supply as many as we can. When you said to Mr. Wishart: "Why don't you get some of your Department to look at it", this is the kind of thing we ought to do and perhaps - but in a number of these cases we have recognized the problem and we have tended to report negatively, rather than saying: "Let us see what we can work out". We can try it and may find it is just impossible, but we should try.

PROF. CREIGHTON: But should we start again, for example, under question 4, at this business of radio and television for Canada after all the investigation, reports, talk, discussion for the last good many years, about thirty, really forty, that has been going on?

PROF. BRADY: I think, Mr. Chairman, a very legitimate question would be with regard to (4): Is there any collaboration between provincial agencies and the C.B.C. that is made difficult or impossible by the present situation?

In other words, I can see the provinces becoming more and more interested, let us say, in television especially in relation to education. I understand, and the last Fowler report of 1965 seemed to stress, that it was possible, and indeed it has been done, to make arrangements between the C.B.C. and provincial agencies.





DR. FORSEY: I think so.

PROF. BRADY: I don't know whether all these efforts are working well or not, but I think that kind of question is a very proper one to raise. If we arrived at some mechanism to further co-operation it may meet the Quebec position.

Obviously the national broadcasting arrangement is, broadly speaking, very satisfactory. It is a costly thing, and to have one national system for co-ordination then below it, would seem the sensible procedure.

Again, I think I would agree with Mr. Meisel, by the way that we should not necessarily say to all these propositions: "No, that is not very feasible" because that has been the practice, as it were, for us in the past.

DR. FORSEY: I have not suggested that. I have said: Let us examine it and see what is really involved.

PROF. McWHINNEY: Could one add to that that in comparative federal systems this is not too unique a problem, and there is at least one other country, federal state, where competence over television is in fact, as the result of Supreme Court decision, established between the Federal Government and the member-states? In other words, other alternatives are constitutionally possible, and it seems to me one perhaps would have a better case



if one studied the other arrangements and decided on that basis what would be acceptable for us.

DR. FORSEY: What I am driving at is that here you have got something quite specific.

PROF. McWHINNEY: I think, however, of West Germany, where the television problems of a continent are far greater than here, because here we are only dealing with one other international arrangement - you can imagine the mess in Europe in a system of having the Federal member states competing, and yet a viable system has worked out, apparently worked out, because the Supreme Court has said you have got to do it.

THE CHAIRMAN: Am I misinterpreting you, John, if we said it would be really a progressive thing if we had a number of matters, that we are in a position to forward a number of matters that we thought would be good things to be in the Canadian federation, and if a group of such things were set down in Quebec at all, trying to react to them, rather than the other way around?

PROF. MEISEL: I did not have that in mind, but I think probably this would not be bad.

I had more in mind that each of the points really can be responded to in different ways, and we tend to see difficulties and we have not spent enough time really trying to see whether we can reconcile these difficulties with our own particular



solution, and I think we must do this.

DR. FORSEY: We tend to see difficulties to some of us at all events. There are an awful lot of people, especially among what Healey Willan calls the intelligentsia (though God knows why) who do not see difficulties, which are the last thing they will think of. If you say: "Look, there are difficulties about this" they merely say: "Oh, you are a Tory. You are a believer in the status quo. You are withdrawn. You are the prisoner of the work of the past" like my distinguished colleague to my right. "You cannot see anything except in terms of a hundred years ago.

PROF. CREIGHTON: What work am I a prisoner of?

DR. FORSEY: According to Ryan. This is what I am afraid of. I think there is far too much tendency among a great many of the nicest and kindest and distinguished and most Christian and loving of English Canadian people not to realize the difficulties, and they consent in a nice, amiable English-speaking way, and they say: "Well, that doesn't look like a bad idea". Then you raise certain specific points and they discover: "We hadn't thought of that".

Like Alec Corry went out to Banff at the time and came back with a nice, unique report that all Legislatures of all provinces can be made





bilingual. I said: "Does this mean that all legislative documents, records and so on, all Legislatures - Newfoundland by the way - would have to be in both languages?" Alec came to me afterwards and said: "I am awfully glad you raised that point. I never thought of it". I said, "Alec, what are you thinking of?", because it is obvious. This is strange, this is constantly present. If you have not run into it, I have, over and over again.

I do not think it is being merely negative to say: "Well, I want to know first of all what exactly this means. You are asking us to make changes. Now, exactly what do you want and what is involved? Give us something a little exact" and then to say: "We will examine that. Here are certain difficulties", and then go on to say perhaps: "We see certain ways of working out some of these difficulties". I do not say "shut the door" but I am saying make darn sure there is a door to shut if you do need to shut it, so that you won't be swept away.

PROF. MEISEL: Mr. Chairman, I am not suggesting for a moment that we should not do all these things, and we could not fail to do them with Eugene around exhorting us; but I think we should also go beyond this and see to what extent some of these difficulties can be overcome; to what extent we can invent new ways which are not quite the same



as what is being suggested, nor are they quite the same as we have been doing, but which might reconcile some of these different modes of doing things.

All I really had in mind was that I think we have tended to get concerned about difficulties and the problems and the past, and that we should look towards the future.

I think personally (I have said it before) there is a real danger facing this country, and that to relieve this danger and overcome it will require an enormous amount of effort, and an enormous amount of inventiveness and flexibility.

If the Ontario Government has been wise enough to try to do something about this, I think it is upon us to see what we can do in this area.

HON. MR. WISHART: Can we do this unilaterally, ourselves see if we reach the point, or are we saying we should have some dialogue with the people who propose these things?

HON. MR. ROBARTS: But here we are taking it, because we are dealing with demands put forward by people who have a certain point of view, and we are sitting here taking this apart.

HON. MR. WISHART: But we cannot say to anybody who presented this document at this point: "What do you mean?".

PROF. MEISEL: There are a lot of things have been written which support a lot of this out and



which also reveal some real limitation, which we shall have to deal with in a preliminary way and sit down and really think very seriously about the kind of things that we might do - the kind of preamble, for instance, we might want to draft; whether we might use some of the precedents and counterparts from elsewhere which Ted has mentioned; so that when we sit down with them we have a much better brief. Right now all we can say is: "No, it does not seem to work the way we have been doing it; it is no good".

DR. FORSEY: I haven't said that for one minute as far as I am concerned.

PROF. McWHINNEY: There is only one Supreme Court decision deciding this matter, and in my view it is not necessarily decisive, as to television if it were re-examined today, and it is quite possible there is a legitimate Ontario interest in a more rational system of allocation of private licenses than in fact the Federal Government applies. I do not think anybody looking back at this allocation of the private licenses can feel it was a hundred per cent satisfactory operation.

So proceeding, and taking this problem simply from our own point of view, it is quite possible we might have areas of common ground with Quebec or other provinces in a situation such as radio-television; and once you get into comparative





law you find there is no one norm, no one approach in Federal states. It is a highly technical matter on which there are a variety of approaches each of which tends to work, which gives us a good deal of elasticity in adjusting the constitutional formulae which so often are fairly general for our needs, our own social needs as a separate community.

DR. FORSEY: That is what needs analyzing, because there may be someone to say: "Here is an approach I think someone has had somewhere else". It may be, but not standard to us at all.

THE CHAIRMAN: I don't know what your wishes are as to time, but there is one point on which we have got a very thorough and concrete piece of work done, and it is something that is certainly very current in discussion not only in Quebec but other parts of the country. That is the next point here - the Federal Capital.

In view of the time we are clearly not going to solve all these problems or even get through this paper today, but if we do have a few more minutes I think it might be worth just introducing this topic, because we had a very complete study commissioned from Professor Rowat of Carleton University which is in this green covered document.

His terms of reference were not to be an advocate for this but to provide us with an analysis of the background and the arguments for it.



We feel it has been done in a very thorough and very complete manner. At our next meeting we will be having Professor Rowat come down to speak on this paper, and we intend devoting most of our next meeting to consideration of it; but certainly it is a point of view which we realize has many other implications attached to it.

Bill, do you have anything to add to this?

DEAN LEDERMAN: Mr. Chairman, I have read Professor Rowat's study and I am very much impressed by the thoroughness of it. I have not thought the thing through to my own satisfaction yet, except to say that constitutionally it seems a surprisingly easy thing to do under the British North America Act of 1871 to create a federal district (he points this out towards the end of his study) but there are political and legal problems that would follow in the wake of having done this that are very complicated.

Nevertheless I should think that here is something that can be done that would assume great importance in the eyes of French-speaking Canada and which would be taken as a real change in the constitution, moving in the direction of making Canada on the federal level truly bilingual and bicultural and giving them a sense of participation in the Federal Government which they have not had so far.



I think we have to look at this very closely, because here is something which we get without impairing the central powers of the Federal institutions, which will also, I think, go a long way towards recognizing the French fact, and I think that we have to look at this pretty carefully.

That is all I would want to say about it at the present time. Constitutionally it can be done. I think the legal and political problems however difficult, could be solved. This looks most important to me.

THE CHAIRMAN: Roget, this affects your part of the world.

MR. SEGUIN: French-speaking wise, as Bill mentioned, for the whole of Canada, yes. For Franco-Ontarians, we feel for 125,000 of them and the rest of Ontario, that it will weaken them. So we have a quandary which way to turn at the present time.

We feel Confederation-wise it would strengthen the feeling that Ottawa belonged to everyone and not only to the province.

DR. FORSEY: I think it is hopeful and it is very well worth looking at. The difficulties, of course, would be very considerable, and it is particularly interesting to my mind that it has now been given the imprimatur at least of one member of the Dominion Cabinet and, I think, the





Liberal Association convention, and I think there was a resolution to that effect before the recent lamentable seige in Ottawa, so it looks like something of a consensus were emerging on this in principle.

The question that arises in my mind is whether, if the thing gets pushed farther, and there is a general feeling that it is a good thing to do, and the Quebec Government says it will not play: whether then the Province of Ontario might, in a burst of enthusiasm and generosity, say: "Well, all right, we will. If Quebec won't give you any territory for a national capital, we will. We will make provision for the city to be a truly bilingual and bicultural capital on the Ontario side of the river." I think this, at a pinch, might be worthy of the consideration of the Ontario Government.

PROF. CREIGHTON: The brief, Mr. Chairman, does seem to imply that the Federal capital would come out of the territory of one province. It says at page 11:

"A bilingual and bicultural federal  
"capital could be created that would  
"not come under the jurisdiction of  
"the province in which it is situated."

In other words, it is assumed Quebec will not make any concessions on this at all.

MR. SEGUIN: I don't know if you have seen



it, but about ten years ago Mr. Johnson made a declaration to the effect that Hull would be much better off in a Federal District. In fact, the people of Hull were unhappy.

PROF. BRADY: As a matter of fact, if you established a Federal District, would it not be desirable to have Hull in, because you have an area there that really is part of the existing ---

MR. SEGUIN: It gives us the Gatineau Hills, that is about all.

PROF. McWHINNEY: Desirable but not essential, on the Washington experience, because boundaries that were established a hundred years ago are no longer up to date, and of course the people live in Maryland and Virginia.

It would be very attractive, what Eugene suggested, if it is economically possible, would be very attractive if we have the most generous gesture to say: "We believe in such a territory, and we think it should include Hull and Ottawa, but if need be we will go ahead". It is one of those things that strikes me as a very intelligent and very statesmanlike gesture.

DR. FORSEY: It is quite possible when we examine it in detail, we would decide the thing was not practicable, I don't know; but on the face of it it looks to me as if it would be worth going through a good deal of inconvenience for if they are



interested in it really.

PROF. MEISEL: In response to Professor Creighton's point, as a matter of translation, if you look at the French ---

PROF. CREIGHTON: Yes, I have been directed to it.

PROF. MEISEL: It is quite different.

PROF. CREIGHTON: Not quite different.

PROF. MEISEL: To "a province".

PROF. CREIGHTON: Not quite different at all.

DR. FORSEY: I think it is a bad translation.

THE CHAIRMAN: Bill, do you have some information to wind up on the other matters and then we can turn to Professor Brady.

DEAN LEDERMAN: I think I have said enough, Mr. Chairman. Perhaps I should hear about the language problems.

THE CHAIRMAN: Professor Brady.

DR. FORSEY: May I just add one comment upon No. 7.

"In the elaboration of monetary and  
"fiscal policies, as well as in  
"foreign trade policies, the Federal  
"Government should assiduously consult  
"the provinces and in the latter should  
"have at least the strict right to be





"consulted."

This is another case where I would like to know particularly what "at least" ---

HON. MR. ROBARTS: We just finished consulting for two and a half years and there it ended, so I did not get the "at least".

DR. FORSEY: But you weren't really being consulted on these things.

HON. MR. ROBARTS: Not on these things.

THE CHAIRMAN: We did not get that far.

PROF. McIVOR: In contrast, Mr. Chairman, to the quite specific suggestions that are made here in some areas of Federal-Provincial relationships, the suggestions about economic relationships are rather vague. They just state certain general statements of principle here, but it does not afford us any special measures against which we could direct our attention.

They talk about desirable or greater consultation in monetary and fiscal policy, foreign trade and so on, all relations to which we all subscribe, but the implications are not developed.

I think these things strike at the heart really of Federal-Provincial relations in a way that, if we are going to have any semblance of national unity, the view of most of us would be that you can have one monetary policy, you can have one fiscal policy, trade policy and so on; and this



might be an area in the matter of specific suggestions where we might follow John Meisel's suggested approach here. We have already to some extent set out our views concerning fiscal relations. We might get down to business and put together some constructive proposals about what are our views here in these other areas, the extent of the advice and joint arrangement.

DR.FORSEY: Whoever does it had better take a careful look at (b) 3 and 4, the long-winded paragraph 4, which might mean anything under the sun, and the second paragraph which ends up with this interesting statement:

"We feel that eventually it will be  
"necessary to determine the planning  
"administrative authority."

So I think there we have got a clear invitation to do the kind of thing John Meisel has suggested.

THE CHAIRMAN: In the broader economic field, as I have already suggested, sir, to the Committee, it was my opinion that as a result of the recent experience at the Tax Structure Committee that the forum such as it is would probably need some careful re-thinking now. I would think that as a result of the tone with which it broke up, the way in which this kind of consultation and meeting is to continue in the future demands some considerable



re-thinking, and that undoubtedly this is an area in which we should be promulgating somehow.

HON. MR. ROBERTS: Yes, I quite agree. There is no point in simply saying that what we are doing does not work. If we do not agree with the results, we will have to be more positive and come up with something more than that, and this we will inevitably have to do, but it is a very good point that you mention.

THE CHAIRMAN: I would ask the economic and fiscal sub-committee, in co-operation with our own staff, to sit down and, apart from the political problems which may be a large part of it, try to re-assess how things have proceeded through that period of time and they might have been done better or differently, and see if we can make some suggestions, procedural suggestions at least, for the future conduct of these affairs.

Professor Brady.

PROF. BRADY: Mr. Chairman, you suggested that I express a few opinions about the brief as it related to matters of cultural relations, the kind of matters that the sub-committee on cultural affairs might be interested in.

Now, I did that last night and I jotted down some impressions, rather hurried, I am afraid. I should emphasize that not merely have these impressions not been reviewed by myself but they have





not been, of course, reviewed by members of the sub-committee. I am not sure whether they will be really worth much, but here they are.

I looked upon this brief as a document coming from Quebec which must reflect something about French Canadian thinking, at least thinking amongst a group of people, in this case trade union leaders; and I looked for what they tended to emphasize most in their submission to the Legislative Committee.

It struck me very soon that what they seemed to emphasize most was the cultural factor, and that is not surprising. In Quebec federalism is related to culture and language as much as to economics and finance. In fact it may seem to be much more related to culture and language than anything else. This, I think, is clear in the brief.

One may expect trade unionists to emphasize the economic factors. On the contrary, it emphasizes the cultural.

Their remarks, my colleague beside me has said, on economics are rather thin and general and not especially illuminating. They are far-reaching, some of them, in their implications, but they are not really developed; but in emphasizing the cultural factor, they handle, I think, a general fact that it is well for us in English-speaking



Canada to remember.

The French Canadians view the Federal system as especially a convenient system for protecting their own cultural identity. When they see reasons for distrusting the adequacy of this instrument, they become to a greater or lesser extent alienated from the federal regime.

The moderates advocate changes in it, and the radicals, as they have been doing the last year or two, demand its replacement by something different. The federation for them is consciously and unmistakably a means to an end. The cultural survival of their community is the end.

I think to understand their present position in the federation, we have to remember that many contemporary forces have tended to fluctuate from profound concern about linguistic and cultural survival. Hence to steer into fresh life and energy they are falling on nationalism.

This nationalist renaissance has come from a new sense of both their strength and the dangers that confront them. It comes from their strength in that now, by the middle of the 20th Century, they possess, as compared with, let us say, a generation ago, a highly developed community with greater command of the skills and arts needed to sustain social and economic foundations of their common life; but at the same time they have a quickened awareness



of the dangers to which their distinct culture is exposed by the powerful social forces in North America - industrialism, modern technology, urbanization and the development of mass media on radio and television, which threaten to erode and overwhelm their minority culture.

They also see a danger in the centralizing tendency of the Canadian federation since the Second World War, a dominant role of the Federal Government in financial and fiscal policy and also in social policies to shared-cost programmes.

Their nationalism is simply an instinctive response to complex threatening circumstances.

A secondary influence on them no doubt has been the upsurge of nationalism elsewhere in the world with the break-up of the British and French empires. They see, for example, smaller and less well integrated and (compared with Quebec) more culturally backward communities in Africa, becoming independent states. It is perhaps not surprising if some of their impatient youth should think that destiny also required them to make a bold move forward into independence.

It is this situation which explains such documents, I think, as the brief of the unions and, of course, many other manifestos much less well reasoned and less moderate.

This awakened sense of nationalism in the





French Canadian is a solid and substantial fact; it is not likely to wither away, it is not ephemeral; it is far too deeply rooted in a society which has preserved a remarkable cohesion for two centuries. It has recently taken on a more positive character that it will not readily lose; for modern Quebec society, with its growing middle class, has now too many elite groups in sociological influence today, bent on attaining a status for their nationality that they consider equitable, and that they think also will add dignity to their position and give scope to them.

Any realistic examination of the present Canadian federation, the kind of task on which we are embarked on this Committee, has to reckon therefore with this fact of the French Canadian nationalism. If we do not appreciate it and study it carefully and take it seriously, I think we may go astray in some of our conclusions.

Turning to the brief of the unions, a conspicuous feature is the relatively rational and empirical spirit that seems evident in it. I do not say that that spirit is always evident in it, but it runs through a good part of it.

the brief

For example, /showed independence and associate statehood as naive notions, not grounded in any appreciation of the Canadian realities. Nobody really knows what "associate state" means;



its institutions have not been fully described or its wide implications in economic and social terms assessed. It would clearly be a drastic change, the brief emphasizes, and the difficulties in effecting it would be immense. It would dislocate life severely. For these reasons, the unions reject it, and for similar reasons they reject independence.

Instead they concentrate upon what they call "a federation adapted to the needs of today". They thus come to a plane on which we in Ontario can discuss with them, as it were, if we meet them and argue with them, since we too want a federation adapted to the needs of today. There are very few of us think, for example, that no adaptation in the federation is necessary.

What they appear most of all to emphasize, of course, is what I mentioned at the outset - the cultural rights for French Canadians.

This would imply, first, at the Federal level, absolute equality of the two languages, and the concrete meaning to this has to be read, I think, in the context on pages 11 and 12. Perhaps I might briefly read, Mr. Prime Minister. I am not sure whether you have had the chance to read it or whether it is at this stage convenient to read.

" AT THE FEDERAL LEVEL

" As far as Parliament and the



"judiciary are concerned, this is  
"already recognized ---"

that is equality of the two languages:

"--- in theory under Article 133 of  
"the constitution, but this disposition  
"of the law must be applied in practice  
"with far greater rigor and, for  
"instance, no law or regulation should  
"be valid unless the English and French  
"texts are published side by side.

"When it comes to the  
"executive branch of government something  
"completely new must be found. Obviously  
"there can hardly be any question of  
"making Cabinet Ministers pass an  
"examination in bilingualism. This can  
"better be left to the electors.

"But, everywhere else, in the  
"civil service and in the Army, the two  
"languages should be on a basis of  
"absolute equality. This notion of  
"equality should also be applied  
"concretely in the administration and  
"by the Courts. A simply way to  
"arrive at this situation would be to  
"operate along reciprocal rules. For  
"example, when an infantry corporal or  
"a minor functionary in the postal





"service can be permitted to do without  
"French because their work puts them  
"in contact with very few French-  
"speaking people, then the same rule  
"should apply to the English language  
"when English-speaking people involved  
"do not amount to the above-mentioned  
"percentage."

And so on. And then at the provincial level they  
conclude that an analogous principle of reciprocity  
should be applied.

"In principle only the language of the  
"majority would be official. However,  
"when a province has within its  
"boundaries a minority, let us say 15 per  
"cent, or a half million population,  
"of French or English origin, the  
"Legislature function would be exercised  
"on the basis of the absolute equality  
"of the two languages. We doubt that  
"this rule could be extended to the  
"functions of the executive and judiciary,  
"regardless of the relative numbers in  
"the province.

"Each province then could  
"practise unilingualism on these points  
"while it would be understood that a  
"citizen would always have the right



"to an English-French interpreter  
"in his communications with the  
"authorities."

And so on. I do not think I need to read the other points, but it is in this part of the brief, incidentally, really, that you can see some details. The generalizations about rights, liberties and all the rest are too abbreviated, sometimes so abbreviated as to have little meaning, but here they do come to quite definite details.

Aside from these language rights are some other recommendations that impinge on culture. A declaration of fundamental rights and liberties embedded in the constitution, for example. Now, I had some remarks about it, but I do not think it is necessary for me to repeat or to discuss that matter any further.

The brief also recommends that a bilingual Federal capital should be created outside the jurisdiction of any province. The fact of recommending this, of course, is of interest, and the reason, I think, why it is recommended is of interest. It appears to be that it would constitute a better symbol, as it were, of a bicultural and bilingual federation.

Of course the brief does not examine in this context the very complex situation that exists in Ottawa, Hull and the satellite municipalities.



It does not contribute much more than a general statement of what might be desirable. Any transformation of this community into a Federal Capital territory raises a host of questions, and some of them incidentally are very practical questions about liberties. Obviously an exploration of that matter, much greater than they attempt, is desirable.

Now, the brief is a directive or intended to be a directive to the Legislative Committee of the Quebec Legislature. It cannot be taken, therefore, as perhaps giving any directives to the other provinces, outside of their stress upon the necessity for language and cultural rights in those clauses that I mentioned.

Perhaps the most important bicultural problem in Ontario is that of French schools, and it is interesting that the brief says, as far as I recall (I have only read it about once) -- it does not say anything about the French school problem, the educational problem. It probably refers to that in this reference to the educational rights.

The problem, as I hardly need to mention before this group, is a complex one. There has been in Ontario a long history of these French schools or bilingual schools as they are commonly termed now. At one time they seemed threatened,





but more recently they have been protected and extended. There is still scope, I think, for an extension in their historic rights, and perhaps the most constructive would be the development of bilingual high schools within the public school system in those areas where a sufficient French population wants it.

An Ontarian, therefore, looking at this brief of the unions, would perhaps find not very much directive as to what he might do to further biculturalism and bilingualism here, nothing in the way, as it were, of concrete suggestions, and especially on this issue of schools; but I think he could take the brief at least as suggesting that if these Quebec unions took an empiric line in their discussion of the federation on the whole, he should similarly take that line.

The most meaningful action to French Canadians, I suspect, would be illustrated in the manner in which, let us say, we dealt with our Franco-Ontarian minority, and the most critical issue in respect to that minority is that of facilities for bilingual education from kindergarten to the completion of high school.

Well, that is all the reflections on this on the spur of the moment.

THE CHAIRMAN: Thank you very much.  
I find myself trapped somewhat by the unhappy



dilemma that to do justice to all you have said here and the whole subject that this introduces, would require a great deal of time. On the other hand, there are a number of people in the room who have imminent commitments. I think it might perhaps be better to conclude on that high note rather than to end in disarray. Is that a fair way of putting it?

HON. MR. ROBARTS: I would say that I have certainly enjoyed being able to listen to this exchange of ideas around this table, and it assists perhaps in some of the problems that we as the Government will have to direct our minds to, one of which is where in fact we are going, to see what we have done - when I say "we" I mean the Committee - how we can take what the Committee has done and get it into some focus from a practical point of view, how we can use it to assist in the problems of government, and we seem to have reached a bit of a pause which I have been conscious of since last June 5th in this particular aspect of this problem. Since Mr. Lesage was defeated and Mr. Johnson came to power, even the dialogue dropped off for some considerable time.

Now, this situation the week after next, Roget, may wind that machine up again, but at the moment it is not clear, at least in my view, as to just exactly where, as a country, we are going in



our approach to this problem.

Thus it is difficult for me to produce any exact answers to the questions that you raise, Mr. Fox, in the earlier part of this discussion; but, having raised them, I can assure you they will receive some consideration by myself and my colleagues in the Cabinet. I think we will have to await too some of the events that are inevitable, even though we may not know exactly what they are, that will be coming.

Also, I will try with Ian to answer your specific question as to what areas you should begin to bear down on.

I agree with you, Mr. Meisel, that it is always a wonderful thing to enter into one of these discussions with a positive rather than a negative position. Maybe we should start and we will see if we cannot work out some areas in which we could develop some positive positions.

Beyond that, Ian, I can only say how much I have enjoyed being with the Committee today.

THE CHAIRMAN: Thank you, sir. On behalf of the Committee I thank you and your colleagues for being with us, and we stand adjourned.

--- The meeting concluded at 4.45 p.m.









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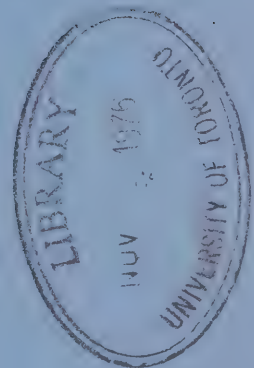
M E E T I N G

held at

950 Yonge Street, TORONTO

on

WEDNESDAY, DECEMBER 21, 1966



VERBATIM REPORT OF PROCEEDINGS  
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CONFIDENTIAL

UNCLASSIFIED

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

--- Meeting held at 950 Yonge Street, Toronto, on  
Wednesday, December 21st, 1966, at 1.30 p.m.

PRESENT:

Prof. D.C.Rowat

Mr.J.H.Perry

Mr.J.Pearson

ADVISORY COMMITTEE

Mr.I.Macdonald (Chairman)

Prof. A. Brady

Prof. J. Conway

Prof. D. Creighton

Dean R. Dillon

Dr. E. Forsey

Prof. P. W. Fox

Dean W. R. Lederman

Mr. C. R.Magone

Prof. E. McWhinney

Prof. J. Meisel

Prof. T. Symons

Mr. R. N. Seguin

SECRETARIES:

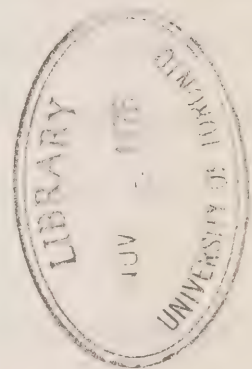
Mr. D. Stevenson

Mr. R. Farrell

Mr. C. Beer

Mr. G. Posen

Mr. P. Venton







THE CHAIRMAN: Well, our main purpose, as you know, is to discuss the Federal Capital question and Professor Rowat's report. I would like to welcome Professor Rowat on behalf of the Committee to this meeting and to thank him not only for the thoroughness and the promptness with which he prepared his report for us, but also for his kindness in coming to the meeting today, not the least a few days before the Christmas season.

I have to explain to Professor Rowat that we have been dealing with the Committee and sub-committee according to our three areas and that we will have some questions and some discussion directed thereto, and I think perhaps it would be useful if Professor Rowat would begin with a commentary on his work and any other matters he might wish to introduce at the beginning.

PROF. ROWAT: Thank you very much, Mr. Chairman. After that kind introduction I feel a little like Charlotte Whitton must have felt when she was Mayor of Ottawa and a reporter phoned her up and said he had heard she was getting married and if that was true, and she thought for a minute and said: "I am sorry to have to deny it, but thank God for the rumour".

After the publicity that came out about this report, I was wondering for a few days whether the details of Jacqueline Kennedy's book or my report



were going to get into the press first. As to some of the controversy that has attended the leakage to the press, I feel a little bit like the old lady who went into church with an ear trumpet and she sat at one of the back seats. The usher had never seen one of these things before, and when she pulled it out in the act of putting it to her ear, he ran over to her and said: "One toot on that thing and out you go".

Well, I thought what I would do, very briefly, perhaps for five minutes or so, is just remind you of the main lines in the report. You are all familiar with the main arguments against a Federal Territory because they have been with us ever since Confederation, and the two main ones that I highlighted were the two arguments that a Federal Territory would destroy local government, which seems to be the favorite one, and therefore local municipalities and citizens, residents of the area, are opposed.

The second one was that the provinces would not agree to surrender the necessary territory, and especially that Quebec, with its sensitiveness about federal power, would not agree to give up territory on the Hull side. So I will not dwell on those any more.

I thought I might usefully briefly remind you of the form of government that I discussed in the



report for the territory which would meet this local government argument of a lack of local representation and which would also solve the future problem of metropolitan government in the Ottawa-Hull area, and then I will review very briefly the four main arguments that have been advanced in favour of a Federal Territory.

Now, the proposal itself that the form of government that was advanced and the sort of thing that I had in mind and was talking about was that we would make the National Capital Region a Federal Territory and that the form of government would be a territorial council of some kind with federal representation and locally elected representation.

Now, this is a variation which I am not sure about the arguments for or against, but I had suggested that there could be and perhaps should be a metropolitan government comparable to Toronto Metro on each side of the river, one for the Ottawa side and one for the Hull side, and then you would leave the local municipalities, except for that, relatively untouched. The cities of Ottawa and Hull, and probably Eastview, if it wished, would continue as local governments.

Now, briefly, the first argument for the Federal Territory is the basic one that has been advanced ever since federalism was invented, and that is that the Federal Government should control its own seat of government in a federation and that





this capital city or federation should not be subject to the jurisdiction of one of the states or provinces in the federation, and one city within that state or province.

The United States constitution recognized this from the beginning with a plan for the creation of the District of Columbia, and most other federations have done likewise.

My preliminary survey here in this ditto sheet that I handed out indicates that there are ten or fifteen federations which provide for a capital district or territory under its direct jurisdiction.

Now, the second argument is the implementation of a National Capital plan which would be worthy of the country as a whole. The difficulty under the existing arrangement is that the Federal Government does not have constitutional and legal jurisdiction over the area and therefore cannot implement the National Capital plan, and I think the point I was trying to make in the report - and I think Jacques Greber fully realized this when he was talking about creating a plan but did not think enough about the problem - implementing it in a federal country.

The third argument was that the Federal Territory would help solve the problems of the metropolitan area because this is growing and is



going to be a much more serious problem in the future for the Ottawa-Hull area. The peculiar character of the Ottawa-Hull area is that it lies in two Provinces and involves two cities which are across the river from each other. The only comparable one that I can think of is Detroit-Windsor, which is even worse, being in two different countries.

The prediction of the Technical Committee for the Ottawa-Hull area, from the transportation study, is that by the year 2000 there will be two million people in the National Capital Region, of which population 97 per cent will be urban. So that it will be one vast, built-up urban area at the centre, and some kind of overall governmental control is needed in order to develop and control this area adequately from the governmental point of view. The question that needs to be asked is: If a Federal Territory is not created, can co-operation among three levels of government, two different provincial governments on two sides of the river, accomplish the job adequately?

The predictions that have been made of the actual growth of the population are going to result in a rather peculiar metro pattern because of the existence of this green belt (indicating on map). This is the unusual feature of the Ottawa area, that the National Capital Commission has purchased this green area of land here.

It means that elements of Ottawa are going



to be at the edge of the green belt, and any future population expansion is going to have to occur here. It is predicted that in the whole area here, here and in the Gatineau area here there are going to be four new cities by the year 2000. This city here is going to be bigger than Hull is right now; it is going to be a city of 180,000, in the Kanada area, and roughly 100,000, each of these cities, and another city of 100,000 here. This whole area will be filled up so that you will have a vast city here on both sides with about 200,000 population on the Hull side and perhaps more than 250,000, depending on the number of bridges and the future development of the population.

So this is the kind of pattern, then, that we have to be thinking about that should occur by the year 2000.

Now, the fourth argument, of course, which is the new element in the situation - some of us wonder why it was not an element in the situation from the beginning - but in any case the argument has been raised, I think particularly by the Royal Commission on Bilingualism and Biculturalism, that Ottawa should become the symbol of bilingualism and biculturalism for Canada, and that this can be accomplished in the existing situation, with Ottawa, the Capital city and predominantly English speaking, being very reluctant to recognize the use of the French language in its city government, and so on.





And so attitudes have been changing significantly and, in my opinion, rapidly, in Quebec in the last couple of years. Now at least one French-speaking Cabinet Minister of the Federal Government has spoken in favour of a Federal Territory, Minister Sauve. I think perhaps that Marchand is in favour, although I have not seen any public statement.

And the people in the Hull area, too, are now beginning to re-think the situation. They have always been unalterably opposed to a Federal Territory and felt that they had gotten a better deal from the Federal Government. Now, they are beginning to wonder whether this new objective of creating a bilingual and bicultural capital should not result in a re-thinking of the situation for them.

There is now a Western Quebec Regional Economic Council, or something - I do not know its name - which is now looking seriously into this proposal for a Federal Territory.

So that those, then, are the four main arguments, with the bilingual-bicultural one, a new one, which strengthens the others. They had existed ever since Confederation but did not become serious until recent times simply because the population of Ottawa was small; the capital was located on Parliament Hill and there was not much of a problem with the surrounding territory.



Now, the one interesting thing from my point of view is that I had always accepted these stock arguments, that it was too big a change and that the provincial governments would not agree, that it would destroy local self-government, and I think the reason is that we have always used Washington and Canberra as the whipping boys, bad examples, and said: "Well, now, we do not want that sort of thing in Ottawa".

We knew and still know the parallel about other federal capitals of the world, and as I say, like most people, I accepted these arguments and am now beginning to shift my ground, change my view as a result of having looked into it.

But I feel that we cannot make a sound judgment without full knowledge of the experience of other federal capitals, other governments in other areas. This is why I have now become so interested that I propose to do a continuing study of other federal capitals of the world, and I am now beginning to acquire information about other governments, and this little ditto sheet I handed out is really just a kind of preliminary run-down, a summary of some of the basic information that I have managed to gather so far.

So that with that brief introduction, Mr. Chairman, I will conclude my comments.

THE CHAIRMAN: Thank you very much, Mr. Rowat.



Well, there is a great deal to be done and there is always the question of order, of the procedure. I think one could argue, however, that this problem has arisen in our context as an Advisory Committee on Confederation as a possible objective among various objectives in changing the Federal practices, the practices of the Federal system, that if one came to the conclusion that it was a thing to be done, then there would be practical considerations of a constitutional or economic kind to contend with.

Perhaps, then, we should begin by looking at the objectives of this, and the purposes it could be intended to serve, and I might ask the cultural committee to lead off. Mr. Seguin is going to speak both from that group and as a member from Ottawa.

MR. SEGUIN: As a group I must say we did not look at it this morning; we did not have time, and as a member for Ottawa I will not speak either. But as a member of the Franco-Ontarian population I will speak. As a Franco-Ontarian I would look at it, coming from the District of Ottawa, firstly, that I would think it would be advantageous for the Franco-Ontarians to belong to a fully bilingual capital or area; secondly, that we are of the opinion that a Federal District would be looked upon favourably by the whole of the





population of Canada, not only by Quebec, but by the people of Victoria, the people of Vancouver, the people of Winnipeg, and so on. I know these people. They work in Ottawa as civil servants, but they do not consider Ottawa as the national capital from the fact that it is situated in Ontario.

As a Franco-Ontarian we would agree to the National Capital, provided that the rights of Franco-Ontarians in other parts of Ontario would be guaranteed by the Province of Ontario prior to our leaving Ontario, certain rights, municipalities, bilingualism, departmental bilingualism, and so on.

As to the feasibility of it, we looked upon it may be differently than the people on the Hull side would look at it. We are of the opinion that education should be bilingual, while probably some people from Hull would say they should have the educational system they presently have in Quebec. We are of the opinion that it should be continued as bilingual as it is presently in the Separate Schools of Ontario.

We are also of the opinion that the different municipalities should not keep their entity, even for any period of time, but that it should be a sudden-death change, otherwise the same thing will continue as it is now under the National Capital Commission.

Law-wise, I do not see myself - although



I am a Quebec lawyer - I do not see myself being subjected to the Civil Code or the Common Law of Ontario. I would say it should be a Code of some kind, or a common law, general common law, a federal law, and that the Exchequer Court should exercise the jurisdiction to judge the people within the District.

That is all I have to say at the present. I have some detailed comments but I will reserve them for a later meeting. Now, there might be some others in the cultural committee. We did not look at it this morning.

THE CHAIRMAN: I think we will just open up from here. Professor McWhinney is not back yet, in any event.

PROF. MEISEL: Mr. Chairman, it seems to me that Mr. Seguin shows remarkable restraint, because there must be a great deal of anxiety, I should think, amongst Franco-Ontarians outside the Ottawa region about this. If French-speaking people living in this area, the capital area, are removed from Ontario, there is not much of a French-speaking minority left in Ontario.

MR. SEGUIN: Well, in numbers there is, but maybe I should not mention that because they are from the rest of the province, so that I am prejudiced as far as the intellectual elite is concerned around Ottawa, not around the rest of the province.



PROF. BRADY: Franco-Ontarians would be decapitated, maybe.

MR. SEGUIN: Around the neck, maybe. They are worried, there is no doubt about it. That is why I would say that prior to our leaving Ontario we would ask Ontario to recognize certain rights for the Franco-Ontarian population.

PROF. ROWAT: More than half would still be left.

PROF. BRADY: Oh, yes, much more than even 600,000.

PROF. ROWAT: They would be scattered.

PROF. BRADY: There would be about 500,000.

DR. FORSEY: They would be around the Eastern Townships, Penetanguishene -

MR. SEGUIN: And Timmins, Sudbury, those areas, but that is Northern Ontario. After that we would be the largest majority.

DR. FORSEY: I wonder if Mr. Seguin could be a little more precise about these guarantees that he thinks the remaining Franco-Ontarians would have to have, because I thought they were a little bit broadly stated.

MR. SEGUIN: Well, elementary school-wise we have an elementary school system which we are satisfied with. Secondary schools we have not, and I would ask for secondary schools. You put





me in an awkward situation, to say non-denominational, but as long as it remains within these four walls, until the press in Ottawa picks it up, I would say that we would be agreeable to a non-denominational secondary school system, and I think eventually in some areas of Ontario these would be looking towards the permission of carrying on meetings in villages or small towns where there is a French-speaking population or where the majority is French-speaking. The same thing in our courts in Eastern Ontario.

PROF. FOX: Mr. Chairman, are we confined now to discussing the Franco-Ontarian aspect of this, or can we broaden it?

MR. SEGUIN: No, no.

PROF. FOX: Well, I would like to hear a little bit more about the Federal capitals Professor Rowat just brought forth, which I found interesting because I know nothing about these. I had no idea ten capital cities are within a territory governed exclusively by the central government, but I also really do not know that much about the disadvantages of the Washington system or Canberra's, and I wonder if you would like to elaborate, Mr. Rowat, on just what these disadvantages are in these two in particular or, say, just in Washington.

MR. STEVENSON: Mr. Chairman, just as an addendum to that question, I wonder if Mr. Rowat



has also, in this consideration of other capitals, considered the federal capital of Brussels, which I think is particularly interesting because of its linguistic problem and which has many more aspects of Ottawa than some of the federal capitals of other countries.

PROF. ROWAT: It may be more relevant here to one of the four arguments, that is, the bilingual and bicultural one, that is true, and it certainly would be worth looking into from that point of view.

I think that the Royal Commission on Bilingualism and Biculturalism, that aspect of it, the study which is concerned with the federal Capital area, has gathered some information, has taken some interest in Brussels. I confined my attention so much to the Ottawa problem and have gathered so little information about federal capitals elsewhere that I do not think I can give an adequate answer to Paul Fox's question. Harvey Perry can; he is also an expert on Canberra and Washington and did a comparative study of these two capitals, plus Ottawa, at the time Nigeria was setting up its federal capital.

But I think most of you are vaguely familiar with the situation in Washington, and that is that Washington is governed by a Commission appointed by the Congress of the United States, and, for many purposes, it is governed by Committees of



Congress; and then this Commission works underneath the Committees.

The main problem here, I think, which is one peculiar to Washington and would not have a parallel in Canada, is that the population of Washington has become a majority negro population since the end of the Second World War. It is now about 60 per cent negro. The Committees which control the District of Columbia are controlled by southern Senators who dislike the idea of a locally elected government which would be run by a majority of negroes.

I think this is one of the strongest factors that has held up local government in Washington. It did have a locally elected government for a period of time just about the time of Confederation. It might be very interesting to study that period, because there was a certain amount of corruption at the time, there were financial troubles. Harvey may be able to tell you more about it than I.

One impression I got from the preliminary study is that the Federal Government in Washington at that time was not very generous financially and that the locally elected government collapsed, partly for financial inability and in that the Federal Government contributed less than half of the budget of Washington. I think it was about





twenty-five per cent, something in that --

MR. PERRY: A good deal less.

PROF. ROWAT: So that there is the financial problem there, and one might argue that if the Federal Government had been more generous in their financing at that time a locally elected government might indeed have succeeded.

PROF. FOX: Is the situation at the moment that it is the Committee of Congress that sets the tax rate for residence and property owners in D.C. , or what?

MR. PERRY: I think the answer is, roughly, yes.

PROF. ROWAT: Yes.

PROF. FOX: And there is no representation of citizens?

PROF. ROWAT: And all laws applying to Washington are passed by Congress on the recommendation of the Committee.

PROF. FOX: And what sort of legal structure do they have in the District of Columbia, common law, Code, civil law?

PROF. ROWAT: I think they follow pretty well the pattern of state laws, you know, where, say, a state act has been brought up, they would be very likely to adopt it for D.C.

PROF. FOX: What about services? Do you have a Washington police force, or are these



federal employees, I mean, some department of Government? Do you have a Washington Street Cleaning Department, or does the Federal Department of Public Services do this and --?

PROF. ROWAT: It is a terribly complex picture. There is a board of three Commissioners which is supposedly the government for Washington and has certain functions, but their government departments also muck into the thing, and planning is a hopeless mess because the population has overflowed the boundaries of Washington long ago and got into two or three surrounding States.

PROF. CREIGHTON: But you are really saying, in effect, the situation which exists in Canada exists in the United States as a result of the spread of Washington over two or three States.

PROF. ROWAT: Yes. The local government situation is every bit as complex.

PROF. CREIGHTON: Every bit as complex. In fact, more so, if anything. So they have not solved their problem by the creation of a capital --

PROF. BRADY: Has the Columbia District definition complicated coping with the metropolitan problem which is extending beyond the boundaries of the District?.

PROF. ROWAT: I do not think so. I think I think it would be just as complicated if Washington had fallen under the jurisdiction of one of the States.



DR. FORSEY: Was it not carved out of the territory of Virginia?

MR. PERRY: Partly Maryland too.

PROF. ROWAT: And then a piece was given back. It was thought to be too big at the time.

PROF. CREIGHTON: A piece was given back to Virginia?

PROF. ROWAT: That is right. And it is only in the Twentieth Century that this new metro problem has arisen.

MR. PERRY: Are you going to mention the Canberra situation, which is quite different again?

PROF. ROWAT: Canberra, of course, was a new capital which took a long time to be created after Confederation in 1900. I think it was about 1912 or thereabouts that the government offices began to move into Canberra, and it was for a long time a headquarters. Federal government departments persisted in refusing to go there for a long time, and it was only in the 1920's that they finally got them to move, and it was a city of about fifteen to twenty-five thousand population right up until the end of the war.

MR. PERRY: A most interesting stipulation was that in order to settle the rivalry between Sydney and Melbourne, it was provided that the capital of the Commonwealth be at least 100 miles away from either one of them, and there was





not any city a hundred miles away, so they had to build it.

PROF. BRADY: I wonder, before we get too far afield, we have discussed some of the problems that arise in the Ottawa situation and that would arise, perhaps, in the case of a Federal Territory if you established it. I jotted down a few impressions as I read Don's interesting report, and the first that strikes me is that here you have an application of a drastic piece of political surgery whose effects are difficult to assess.

4 For example, it would mean separating Ontario's third largest city from its provincial and regional hinterland. Now, I do not know what the consequences of that would be upon the province. I do not know whether it is possible to assess them or whether anybody has tried to assess them, but certainly from the point of view of Ontario it is a very pertinent question to consider. The effects might be unfortunate.

And then a second question that struck me is that defining the boundaries of a Territory might be difficult to do, and when defined they might be unsuitable ten years hence. A change would then be difficult because it would require another constitutional amendment, as your report points out, actually to establish a Federal Territory. Unquestionably it would require a constitutional amendment of some kind.



If Ottawa and its satellite municipalities are left under Ontario's direction, leaving aside now the considerations of the Quebec side, the Hull side, it would at least ensure a greater flexibility in future arrangements, not that changes are always easy, but at any rate you would not have the problem of a constitutional amendment to effect, and the Ottawa metropolitan area would have its system of government readily changed by the Provincial Legislature as circumstances require.

The broad fact is that surely no one, not even the best of planners, can predict what the administrative needs of the metropolitan area are going to be ten years hence. Technological as well as population changes are difficult to forecast. Certainly they have been in the last quarter of a century. To prescribe a Federal Territory for an Ottawa-Hull district today, let us say, might be to prescribe something territorially inflexible for communities that are now growing rapidly.

Apart from these considerations, if I am not appearing to give a speech, Mr. Chairman - ?

THE CHAIRMAN: No, no.

PROF. BRADY: Apart from these considerations, the governing of such a territory, if it included both Hull and Ottawa, would be difficult, as I think Professor Rowat points out, because of the diversities of culture and language.



Slow accommodations to these diversities are being made in Ottawa and have been made, but in a Federal Territory they would probably have to be made more quickly, and if they were made more quickly, tensions would be sharper and relations between the two cultural groups could worsen.

In other words, at any rate in the short run, rather than improve, it could worsen. The effect might be unfortunate upon French-English relations in general in the federation.

And then, another point, making Ottawa more satisfactory and impressive as a capital can be pursued without establishing a Federal Territory under a separate system of government. It can be done only, of course, through closer collaboration between the two provinces and the Federal Government.

The Federal Government in itself, however, can do much to create a more satisfactory social environment for the capital, could, for example, stimulate the development of downtown Hull by placing some federal buildings there and spending more money there.

Now, Hull is not the capital, but it forms, after all, part of the community that can give a character to the capital. It hardly does so today, because, as Professor Rowat's report points out, until recently it has been grossly neglected





by the Federal Government. More attention of this kind to Hull might evoke more co-operation from the Quebec government in furthering the National Capital Plan.

In any case, Hull, as a Quebec and French-Canadian city, should be brought more definitely and fully into the lap of the National Capital, that is, of the National Capital community, without destroying either its identity or that of Ottawa. This, perhaps, in my opinion, would be a more portable policy than that of trying to assimilate Hull into a newly created Federal Territory.

I doubt that Hull may want to enter such a territory, but perhaps it may. But I have, nevertheless, doubts, and that if she did enter it the experiment might generate a certain amount of disharmony. Now, those are only a few questions about the general argument on the Federal Territory. I think they might be worth looking into.

THE CHAIRMAN: That is a considerable commentary indeed.

PROF. ROWAT: I wonder, Mr. Chairman, if I can go back to a comment Mr. Seguin made which I did not quite understand, and that is his statement that he thought there should be a sudden-death change. I understood him to say



there should be new Federal Code or Civil Law,  
is that it?

MR. SEGUIN: A Federal Code or a  
Common Code, whichever you want to call it.

PROF. ROWAT: - which would be uniform  
for the whole Territory. What is your reason  
for it?

MR. SEGUIN: My reason for it: why  
should one man on one side of the river be  
brought before a Court under Common Law, and  
why should the other chap be brought before the  
Civil Code, the Quebec Code?

PROF. ROWAT: So your proposal would  
be for the Federal Government, at the time the  
Territory was created -

MR. SEGUIN: - draft a Code which would  
be either a Code or statute, it does not matter  
to me whichever it is, but I think it should be  
the same law for both sides, the same thing as  
when somebody from Hull proposed to me: "Well",  
they said, "we will keep our school system; you  
keep yours".

Well, if you want to make a federal  
capital there, make it or do not make it at all.  
I mean, it should not be half and half.  
Otherwise it will be the same thing as we have  
now, a National Capital Commission where everybody  
will pull the blanket to get a park or a driveway.



And that is what we will only accomplish with it.

Now, I would like to answer Professor Brady on Quebec. I have talked to quite a number of Quebec people, and they feel that they have been the abandoned parent of Quebec, in western Quebec. So do we Ottawa people, and I am not speaking of the French people; I am speaking also for the English-speaking. As you will read in our newspapers, we feel we have been abandoned sometimes by Ontario being in that area, highways, public buildings and so on, and Ministers. Lately you had an editorial in the Journal that we feel we should have more Ministers in the Ontario Cabinet, so that the population of both cities might in some areas be represented.

DEAN LEDERMAN: Mr. Chairman, Mr. Seguin knows much more about the Ottawa area obviously than I do. I would have misgivings about this clean sweep of which he speaks. Could not some distinction be made? I mean, one could continue to have private law, large sections to private law, of property, of wills, family law and so on, unchanged, in the two parts of an Ottawa-Hull capital district, have these two sets of laws continuing and yet have an over-riding federal authority on things like education, public works, National Capital planning, and so on.





I think something like this could be worked out. After all, when Upper and Lower Canada were joined into the United Provinces of Canada, the two bodies of private law were kept separate and continued to operate on both sides of the river. My impression would be that both on the Hull side, with respect to French private law institutions, and on the Ontario side with respect to Common Law institutions, English law institutions, these things are pretty deeply rooted in the consciousness of the respective peoples.

You can accomplish the object of a National Capital District in terms of finance, planning, educational facilities, the whole physical aspect of the National Capital, without disturbing the private law, and these things would continue to be dealt with as they have always been dealt with, across provincial boundaries. My approach to it would be a selective one in these terms.

THE CHAIRMAN: I do not want to break into this discussion, but it occurs to me that perhaps we should ask Professor McWhinney to speak now. I do not know how far he will be going into the legal aspect or the constitutional aspect, but I cannot think of anyone better than a professor of Air and Space law to deal with this



subject.

PROF. McWHINNEY: As an old civil lawyer and somebody who talked about Civil Law in Common Law countries for a time, I would have to say that Professor Rowat's proposals would really be sui generis in terms of federal systems. There is no comparable case among any of these that you cited where in effect a Federal Capital Territory would have to twin, two different systems of law. It is a very easy problem in your common law countries, because, in general they are uncodified. Common law is not basically different in New South Wales than it is in Victoria or any other place, than the common law of D.C. or Maryland, or Virginia, but in no one of these fifteen, I think, federal countries cited, has this position occurred, and I do not think we should underestimate the practical difficulties. It seems to me it would introduce a sort of Burgundian constitutional principle that you sort of carry your law with you in your pockets, and maybe it would be very good for lawyers to have to put up with that problem.

I feel, Professor Rowat, in some ways perhaps you over-simplified the problem in its solution. I can think of disastrous results if the Exchequer Court were faced immediately with the problems as you suggest for a transitional



period, avoiding conflict and somehow trying to uniform or harmonize these laws.

The fact is, of course, the Supreme Court of Canada, by Quebec standards had done a very bad job in doing justice to the Civil Law, and I think this can apply even more to the inferior Court. I do not say it can be overcome, but it is an involved problem and I am rather inclined to agree with Mr. Seguin for quantifying the advantages of having a Federal Capital Territory and trying to balance them against the disadvantages for taking this approach. You tried to estimate what was involved in legal terms. You would have to have a substantial capital investment of legal talent to think on the rather lengthy business of drafting in effect a new Code.

I suppose any Ontarian would not object to it since the Quebec Civil Code is authoritative in both French and English. The Abyssinian Code, which is based on the Quebec Code, might not be a bad solution, because it brings some Common Law points. I mention this to indicate the problems.

It seems to me you would ideally have to have your system of private law established from the outset; secondly, if you proceed on this compromise basis you could have a Federal Capital District with two different bodies of law operating on different sides of the river.





And do not forget, the river is helpful because at least the parish priest will know then which legal system he is in.

But I think you are aware that if a male in Quebec does not make a special contract, automatically half of your property as a husband is seized for your wife's benefit, and there are very dramatic legal consequences that follow. It is a great disadvantage for a male to live in a Civil Law province in many ways. I think you will agree with that, Mr. Seguin, as a lawyer --

THE CHAIRMAN: It depends if you are looking at it from the man's or the woman's point of view.

PROF. McWHINNEY: But even assuming you left both systems operating, I think we would have to be very honest and say one of the difficulties many of us have in defence of the Supreme Court of Canada - and I was making this point only a half hour ago to a high judicial personality recently among us - it has not done a very good job in certain areas. And this must be said of the Civil Law, and this must be said of the conflicts of law, harmonizing of the law and the interaction across provincial boundaries, and I think this is going to apply far more to the inferior Federal Court. And the Exchequer Court just terrifies me as a problem-solving body. This is not to say, in fairness



to Professor Rowat's paper, because I think you are assuming in presenting your paper that a political decision-maker would go through this quantitative process, and I am sure you probably agree with me the pains in the private law area are very, very great indeed, and we should not underestimate them.

I do not think you can get any help - I was going through these, Australia, United States, the Soviet Union, for example. Moscow happens to be the capital city, but it is the capital city also of a province, a constituent republic, the R.S.S.R. This has its own Civil Code, but the only substantial differences between the Civil Code of the R.S.S.R. and the other constituent republics are in family law areas.

If you get the Uzbek Republic, you may find you may in some circumstances have a wife, a mesalliance; this is pluralism in the Soviet sense, to take account of Moslem particularism. I was reminded of that very strongly when a visitor from Leningrad visited us and it turned out he was a Moslem from Uzbekistan and was carrying his personal family law about with him.

DR.FORSEY: Four of them.

PROF.McWHINNEY: I say it only, though half facetiously, I think from the technical-legal



viewpoint it is going to be enormously difficult. Mr. Seguin's suggestion is the obvious solution of it, but I was thinking in comparable terms the drafting of the German Civil Code, if you work it out, twenty-six years labour by two thousand top brains in the community. We could occupy all the legal faculties of Ontario doing this for twenty-six years. But it is big.

And this brings me back to another question: really, are you sure - and I know Professor Rowat is doing a pioneer study here but has not been able to do a detailed study of these other federations - but one of the issues one would have to ask is: are they achieving very much in the countries which they set up, for example, Canberra? Has it made much difference?

Apart from nationalism, are the problems with Ottawa that I think in your paper you suggest might be solved by a Federal Capital Territory - are they problems that could not be solved outside the federal constitutional area by better urban planning or changes in the municipal law involving co-operation between municipalities, for example, this problem that arose in Moscow and this problem that arose in Leningrad?

And you are perfectly correct in your paper in saying it was solved in a way on the Toronto model except of course in Ottawa and





Moscow and Leningrad they say Toronto's problems were solved in the Moscow and the Leningrad model. But I am wondering, really, if a good deal, it seems to me once you get out of emotional nationalism, which is obviously, in political terms in Canada terribly important and has to be given deference - but once you get out of that and get into areas more strictly to do with public administration, economic planning and the like, does one need to do this through a Federal Capital Territory?

In other words, can they not, issues like pollution, be solved by the use of techniques constitutional lawyers develop to transcend existing urban political boundaries where blockages in the Legislature or pressure group activities prevent a rational solution. Could one not solve these problems by the use of existing facilities with more imagination?

So those would be my general comments except to stress again, Mr. Chairman - and I am sure Professor Rowat did not exclude this from his report - the solution in private law terms I think is enormously complicated. The solution proposed would be extremely difficult to work practically, even if you did have the two systems.

I am just not satisfied the judicial



hierarchy we have now could provide this harmonization you are speaking of and if you ask me what about Mr. Seguin's solution, short of doing as Abyssinia had in taking somebody's Code as a model, it would tie up a great deal of manpower on what is not socially useful work, in other words, manpower that could be used for other problems.

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So we have to say "Pause", really, in citing most of these examples.

Going through, again, Mexico City, the same problem again. Mexico has a number of Civil Codes but they are all substantially identical except, again, in certain family law areas. Then, Brazil, you see, the problem would be sui generis and the difficulties, therefore, should not be underestimated.

This is not criticism, of course, of Professor Rowat's report. His general argument I am very impressed with.

THE CHAIRMAN: I think, while we are digesting that, I might just call a thirty second break for the sake of our reporter, for the sake of our reporter's hand.

--- A brief recess

THE CHAIRMAN: We might go into Harvey's observations and then come back to the discussion.



MR. PERRY: In our economics and finance sub-committee, of course, we concentrated on these particular aspects of the problem presented by Ottawa and of the proposal to have some sort of Federal District organization. The economic aspects were a little bit challenging. By and large we could not see that they would be very significant.

Ottawa, as Alec Brady has said, has a hinterland and there might be some effect on this hinterland in changing the form of local government, but we could not say whether it would be very material or not. In general terms, I suppose, making a metropolitan area more efficient as a metropolitan area might have some local economic benefit, but again we could not attach any immediate significance to it.

In national terms, again, it is rather doubtful if there would be much economic impact, so from the pure and simple economic side of the matter we could not really say that there is very much that would have to be considered. On the financial aspect, the very first question, of course, is what the financial equation would be between the three levels of government involved before and after the change.

As I am sure you all know, the Federal Government now makes substantial grants to Ottawa





as a city. It is spending relatively large amounts in recent years for the acquisition of property for future development under the National Capital Plan.

The Province of Ontario would be making grants to Ottawa under its normal system of municipal grants, as would the Province of Quebec to Hull. The residents of the local area would be paying all three sets of taxes. They are no different from any other citizens in that respect; they would be paying federal, provincial and municipal taxes.

With the new system of government such as Professor Rowat proposes, apparently there would be a basic municipal structure which would continue to provide local services and therefore would require a revenue base, and I suppose property tax would remain the principal source. The new level of government, I understand, would levy the taxes now levied by the provinces on the people in the area, which would be a personal income tax, corporate income tax, retail sales tax, gasoline tax, what you will. And, of course, we assume the residents of the area would continue to be subject to federal taxes as they are now.

What the ultimate equation in all these financial changes would be we, of course, are not even able to guess at in a morning's



discussion. I think what emerged from it was that the financial aspect here would depend to a large extent on the kind of objectives that one would want to achieve in this metropolitan area and the speed with which one would want to achieve them.

In the report itself there are two or three indications of fairly large amounts of money to be spent. These relate largely to dealings with the kind of problems which almost any metropolitan area in Canada is facing, the assumption being, of course, that in the Ottawa metropolitan area these are of such national consequence that their solution should be accelerated, presumably, to a large extent, at the expense of the Federal Government.

So that we really ended up feeling that the amounts of money involved to accelerate coping with these metropolitan problems are going to be so substantial that they would be beyond the ability of either the municipality or the new territorial government to raise and that therefore much of the money would have to come from the Federal Government, and we related that, then, to the possible efficiencies which might be achieved through better zoning which would come with the territorial government and more efficient government of the whole area, having in



mind that even in measuring the financial problem there might be some advantage to be gained from the intervention of a new area government.

Obviously we came out with no conclusions on this. I think we went back to the basic question as to how -- and I should say that we looked at the language and culture problem and did not really regard it as having massive economic or financial implications. Now, obviously there would be some in the sense that this would represent a greater outlay on education, there is no doubt about that, but we really did not feel that this was one of the major considerations with regard to either language or culture, and that is the financial aspect.

So, as I say, we went back to the original question: What are the sort of identifiable national issues, national objectives, here which should be achieved, to what extent should the achievement of those be accelerated, to what extent should the main burden of that acceleration fall on the Federal Government, and what would be the sort of equation of the various elements, governmental elements, within the system, both before and after the change?

All of which means that we came up with no solutions or proposals, simply attempting to assess the economic and fiscal implications of





a change.

THE CHAIRMAN: Well, thank you, Harvey. It occurs to me that there is one point in all the discussions that has not been covered here, whose liquor laws would prevail in such -?

PROF. SYMONS: Let us hope the best.

MR. SEGUIN: Diplomatic Corps, no tax, no customs.

PROF. CREIGHTON: Could I ask, in the meantime, Mr. Chairman, it seems to me that Mr. Perry was implying there were these three levels of government and three systems of taxes. Is this in fact the case as you forecast it, Professor Rowat?

PROF. ROWAT: I cannot see any great reason for change, although the taxes might be levied by both the local territory and the local governments in the area.

MR. PERRY: But this would be a matter of economics.

PROF. ROWAT: Yes. Which level, for purposes of efficiency.

DEAN LEDERMAN: This would be in effect a two-tiered metropolitan area government, somewhat like Metro Toronto, with the federal Parliament standing above the two.

PROF. ROWAT: Above the two, that is right.



MR. STEVENSON: Professor Rowat, one thing in our brief look at the report, in the departments which concerned us, was the question of the transition period between perhaps the renting of provisional services from both provincial governments and some ultimate jurisdiction whereby the Federal Territory would take over and develop mutual functions.

Now, it would appear to us that in a number of provincial functions there is a risk of quite a loss of efficiency in trying to duplicate at Federal Territory level the kind of service that a provincial government department, both in Toronto and Quebec, may have built up. Had you given much more thought to the question of a transitional arrangement or the possibility of perhaps continuous renting of services or the purchasing of services from the two provincial governments and their operating departments?

PROF. ROWAT: I have not thought about it much, but I have been assuming that the territorial government and the Federal Government would arrange to rent services for periods of time, perhaps on a contractual basis, for five year periods, and then could take over the services that they felt they wished to run in a different way or make uniform for the territory. And this has been an element of gradualism in the



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thing I gather Mr. Seguin would not like very much because he would like a clean break with the past.

MR. SEGUIN: But municipality-wise I think it has to be achieved. Those are difficulties which we encounter now so we would not accomplish much if we keep to those municipalities.

PROF. CREIGHTON: But under the plan which you projected the municipalities would remain.

PROF. ROWAT: Well, I had envisioned some consolidation of smaller municipalities but I see no reason --

MR. SEGUIN: You would have two zones, rural and urban, under the Federal Government.

PROF. ROWAT: That is right.

PROF. McWHINNEY: That is not necessary, though.

MR. SEGUIN: It would become a provincial government --

PROF. ROWAT: I do not think I answered Dean Lederman accurately either. I think the main suggestion that I made, although I discussed several alternatives, was that there would be a metro government on each side, and then a territorial government on top of that, and then the Federal Government; so it would





be a four-level system.

MR. SEGUIN: Well, I think we will stay as we are. It is ten to three now.

PROF. ROWAT: But people in the Toronto area are quite familiar with this. But it is a four level system in the Toronto area.

DEAN LEDERMAN: The question of municipal institutions, and there would be separated from their continuation of private law - these are not the same question.

PROF. McWHINNEY: In some ways I got the impression - Mr. Rowat, I know of some of your work in other ways - I got the impression that you have two interests in this problem. One is, of course, the Federal Capital Territory and the other is quite obviously in terms of the the reform of municipal government and the better control of services considered municipal.

And it seemed to me that we had asked you to focus attention on the problem in the Ottawa-Hull area, and you might have been able to come out with a good deal of your present proposals without involving the issue of a Federal Capital Territory, am I correct in that?

PROF. ROWAT: That is true, but on the other hand it seems to me it is bound up with the question of the Federal Capital, if you are considering the Federal Capital as an efficient



and well run city, a model for the rest of the country.

This occurred to me when you were talking about Mexico City, for example. I understand the Civil Code of Mexico City has been used as a model for the states in Mexico.

PROF. McWHINNEY: Yes, but to be honest it is not a very substantial point. For example, the Civil Code in the R.S.S.R. includes Moscow as a model for others. It really depends on who drafts it. In the case of Mexico City there was no such thing. It was really codified by all the best talent in the country who happened to choose this as a model but equally could have been presumed to be that of any industrial city in Mexico.

I do not think that by itself was a terribly significant point. Of course, in any of these things in a Civil Law country it goes back to one or two sources, either the Code Napoleon or -- they tried to blend the two. But the difference, for example, of the Civil Law in Japan and the Civil Law in Germany is not as great as all that, because each has the same Code, the German Code, Quebec, some regional models. But I do not think this issue of private law, then Civil Law federations, or private law and Common Law federations, is too



helpful in dealing with a situation as it is here where you have to take in both the systems of Common Law and Civil Law.

If you go back to the Roman law, codification law, and do enough, you could solve it, but that is a big task, because they are all ultimately Roman law. But the difference between substantive principles is vast in many important areas, and although I could see one rational political solution, it would be awfully hard to sell one solution. I would suggest adapting the Quebec Code simply because it has the convenience of being in English and French already translated, but would play havoc with family law, the matrimonial property law and the succession law.

PROF. ROWAT: How difficult would it be to adapt it? You were suggesting earlier you could make certain adjustments to it to conform more closely to the common law tradition.

PROF. McWHINNEY: Then you would have to make the Quebec people give up the distinctive-ness of succession. This, I think, they would be equally reluctant to do, or you could do the Burgundian principle, the principle that you could let people carry their law, so to speak, with their house, and you could say for that Moslem: "We will let you have two wives." You





can apply a principle like that. Then you do beget rather complex legal situations, if it is important enough, of course, it is worth attempting, but I really was only concerned with the fact that it would be difficult and complex. I do not suggest for that reason that it should not be done.

PROF. ROWAT: Another question occurred to me during your comments, and that is, I wondered whether you were saying that you thought a complex of law within the Ottawa-Hull area would be any worse under a Federal Territory than they are now. Would they not be very much the same?

PROF. McWHINNEY: I think you suggested the use of - you would be almost forced to come to such a conclusion as this - the use of some intermediate Federal Court as a harmonizing agency, and my suggestion was that in practical terms at the present time that is not much of a solution in the light of the experience with the Supreme Court of Canada in these difficult areas. It could be done, however.

In other words, you could work out a system of intra-federal capital territory, Civil Law, Common Law conflicts, but you would have a problem which courts you are employing, which judge used one system and not both, and in the experience of the Supreme Court of Canada it is



not really a very easy thing to do. It can be done, though, and you could draft a special code on conflicts. For that matter it could be done. It is really in terms of social costs a considerable investment in quantifying and trying to arrive at a balance of the pains and gains. You would have to say the investment in this task would be considerable.

PROF. ROWAT: To draft a code of conflicts would be less of a task than drafting a Civil Law Code.

PROF. McWHINNEY: This is so. Drafting a code in conflicts would be a philosopher's delight, but to synthesize a Civil Law - Common Law system would demand sacrifices from one group or the other that would be politically hard to sell in either province.

Maybe, you know, this is the political choice where the politician becomes the statesman and says: "You give up on this point because we think it is important", but one should not underestimate the difficulty in advising a political decision-maker. I think that would be my point.

DEAN LEDERMAN: Mr. Chairman, picking up the last point Ted has made of the difficulty of getting citizens of the Ottawa-Hull area to accept a new code which was neither the old Civil



Law nor the old Common Law, I think, in my view, that the object of this project would be to create a city area, a capital area, in which the French Canadian with his Civil Law background might feel at home, and the English Canadian with his Common Law background might feel at home. If you are going to eliminate Civil Law and Common Law, then you are going to make them both feel strange, and it contradicts, I think, the main object.

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If I interpret Dr. Brady correctly, I share his apprehension about the fundamental sociological dislocations, and if this were to be done it would call for what Dr. Rowat calls gradualism. I think there would be quite a transitional period. For one thing you would not be able to make any legal change retroactive. There are vested rights particularly in the field of property which would have to be governed by the pre-existing law, vested rights which lasted fifty, a hundred years. I myself think that the problems of what law was applicable to the citizens in the private law field would have to be solved by process, not by codes. But I made that point before, so I will stop there.

THE CHAIRMAN: Before we go on, I would like to just introduce Mr. John Pearson, who has arrived, we mentioned before. Mr. Pearson is





with the Department of Municipal Affairs and has the responsibility for co-ordinating the various studies of the local governments with his Department, as commissioned in the past year or so, of which three are now in the hands of the government, the Jones report on the Ottawa area, the Plunkett report on Peel-Halton, and the Mayo report on the Niagara Region. And, John, you may at any point in the discussion, please, feel free to speak; I will not introduce you to all the members, but Professor Rowat is here today.

MR. PERRY: I wonder if we should not pursue the idea that Don dropped a few moments ago, that is the thought that Ottawa should be made a sort of model for the rest of the country. It is quite evident that there must be twenty-five other metropolitan areas in Canada which are facing the very same sort of problem, in some cases probably even worse situations, and I think really what is involved here is the extent to which there is national significance attached to achieving a quick solution to these in Ottawa.

We know in general what the arguments are, but I wondered if you could elaborate on this a little bit further, Don.

PROF. ROWAT: Well, I certainly agree with you, that you see, the model argument has



been used frequently before the Royal Commission on Bilingualism and Biculturalism but only with reference to the bilingual and bicultural problem. On the other hand, you can also argue that here is an opportunity for the Federal Government to become a model in many other ways, a city, town planning, urban renewal and so on, to provide an example of what can be done. Ottawa may be and, in some ways, I think, would be a good example or a good laboratory for this because it is not a huge, unmanageable industrial city, say, like Toronto, in which you know you are given a situation which you cannot alter.

In this respect, with careful planning and controls and so on, amazing and interesting things could be done, say, with the downtown core of Ottawa, for example. So that from the point of view of planning a local government, I think certainly the model argument could be applied there, and I have never seen anybody stressing this argument.

DR. FORSEY: Could you not raise the question of whether you considered the possibility of Quebec refusing to play in this thing, whether there would be any point in setting up a second national capital simply with the territory on the Ontario side?

PROF. ROWAT: You may recall I touched



on that. I suggested this as one of the alternatives, and as I recall, rejected it with the comment that it really would not deal with the --

PROF. McWHINNEY: You mean, would not deal with the city planning problem, but might handle the national --

PROF. ROWAT: You see, the argument for adding Hull to strengthen the French-speaking population is a very strong one, because you may recall the figures that the distribution of the population would be 45 per cent Anglo-Saxon, 41 per cent of French origin, and 15 per cent others, which is not a bad balance really; and 60 per cent Roman Catholic.

PROF. McWHINNEY: There is no great hardship. Let us say you set up a Federal Capital Territory solely in Ottawa. There is no special reason you could not make that bilingual. It might be suggested the legal system could be solved with Franco-Ontarians or Anglo-Quebecois into the system. You would make into its laws that an accommodation is made by personal option.

I was thinking of your Washington example. Does it really matter very much if the people live in Baltimore or that Bobby Kennedy lives in Virginia? It hits Washington proper in one sense, I gather in revenue terms; there





is a feeling that they are less well off than if they are able to tax those in suburban areas, and they do lose a certain amount of intellectual talent that now operates suburban Virginia.

But beyond this, do you make a case for taking these areas in? There is no strong Irredentis movement in Washington to take in the surrounding areas, nor, one suspects, would there be in Canberra, although the only annexed area there would be the beach area.

PROF. ROWAT: I was just going to make a comment on that, that one thing impressed me even with this very preliminary survey of federal capitals elsewhere, Ottawa seems to be unusual in that it is neither an entirely built federal capital like Canberra, Brasilia and so on, nor is it a huge industrial centre and, very often, the largest city in a federation. It is kind of halfway between. It is unusual in that respect, which gives it unusual characteristics.

PROF. BRADY: How far do you think the bicultural problem would be met by the Federal Government giving much more attention to Hull and developing it, needless to say, by money - in the last analysis that is what amounts to expenditure - as a more significant city across the river, not in the capital, but providing a French-Canadian community with all the amenities



of a progressive French-Canadian city, sharing in, as it were, a broad community, and perhaps providing more satisfaction to French Canadians in other parts of Quebec when they went to Ottawa.

PROF. ROWAT: I would be interested in hearing what Mr. Seguin might have to say about this.

MR. PERRY: You are getting at something we were wondering about this morning, what really is involved in taking Hull. Does it involve completely rebuilding the city?

MR. SEGUIN: Just about.

MR. PERRY: Not very much there that one would preserve. What are you talking about, a billion dollars or something?

PROF. ROWAT: It is difficult to do when it is not an official part of the capital city. I think this is technically a concentrational problem.

MR. SEGUIN: As Franco-Ontarians we do not mind if Hull is left out.

THE CHAIRMAN: I could take the point Professor McWhinney was making about Ottawa back one step further. Supposing we are to ask from the point of view of this Committee looking for the means of improving the problems that exist in Confederation, to what extent could



things be done within a given context, within Ottawa, that would meet the apparent deficiencies?

For example, the thing I hear repeatedly from federal civil servants is the problem of the French-speaking civil servant living in Ottawa because of the school situation. Also the point you made, Professor Rowat, about Hull's quasi balance of population. I suppose in the long run there is no guarantee that the balance would remain as such, although there is no reason to presume it would not either. But if we are beginning from the point of view of saying there are things that are wrong in the present capital, to what extent can those wrongs be righted, so to speak, within the given situation?

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PROF. MEISEL: I think that is a very important aspect of the problem, but it is a very dangerous one. One could alleviate some of these shortcomings in an isolated way. It would be possible, for instance, to establish two or three really good bilingual schools, and with this, part of the discontent of many obviously French-speaking civil servants would be removed.

But I do not think this is getting at the root of the problem, because you would still be left in an environment which essentially





perhaps is not hostile but certainly unfriendly and uncongenial to someone who thinks of himself as a French Canadian and wants to live in a French-Canadian atmosphere.

Schools are only one thing, and I think our Committee should really look at it from two points of view: one is the problem of establishing in Canada certain kinds of national symbols, if you like, which bind us together regardless of who we are and whether we are French-speaking or English-speaking, from Vancouver or from the Maritimes, something that everyone in Canada shares and has some pride in. This is one thing which is unrelated to this sort of more piecemeal approach, and I think there is some danger of providing a number of palliatives which could probably be tackled without too much trouble, thereby removing one of the great forces for making Ottawa something really unique and something we could be proud of.

I am not saying you should not look at these palliatives, but in doing so you should not overlook the broader question which in the long run is more important to us. The Bi-Bi Commission must look at the point of view of what civil servants want to move to Ottawa, but our perspective really should be broader.

PROF. ROWAT: May I just second what



John Meisel said. I talked to a number of people, English-speaking Canadians, who, however, felt that all you have got to do to make the local government bilingual is to put up a bilingual sign. This is just one of the problems, looking at the whole area, and if we are really talking about the English-speaking Canadians, this is really an educational problem.

You cannot expect the Government of Ontario to isolate Ottawa as an area and to treat it in a special way simply because it is the capital city. You cannot expect it to turn all English-speaking people in Ontario into bilingual persons. This is an unrealistic proposal too. And yet there is a special need for the Ottawa area to have this character. I think it could only be accomplished through a federal territory in which the educational system is reformed and revamped.

DR. FORSEY: If we do not do something to promote better educational facilities for teaching French to English-speaking people, and the central government goes ahead with its present proposals for bilingualizing central civil servants, the problem may solve itself in a different way. We may find before too long that we have got a predominantly French-Canadian civil service, and an exodus of English-speaking civil servants from



Ottawa may result, a trek to Toronto comparable to the trek of French-Canadian civil servants in Quebec. I am not being facetious. Before very long we are going to find out that we are going to be on the outside looking in in the civil service. The French-Canadians, especially of technical education, are going to walk in and take the thing over and we will just be left in the cold.

PROF. MEISEL: That, I think, goes back to some other points made in the report that you do not become familiar with the language merely by studying it in school. If you live in a city which is bilingual, where you have a chance to speak, go to plays, movies, run into people who use both languages, you can keep up your language. It is very hard not to forget it.

DR. FORSEY: Oh, yes, but unless you have some educational facilities ---

PROF. MEISEL: You need both a good educational system, plus an opportunity to practise.

DR. FORSEY: If you do not get much educational facilities, English-Canadians would take this view ---

THE CHAIRMAN: Would this not assume that all civil servants are going to come from the Ottawa area?





DR. FORSEY: No, I am simply saying that the English-speaking Canadians are at liberty to go everywhere. If you really carried through bilingualism of central civil servants, then you are going to have repercussions in the educational systems of the provinces to a greater or less degree. If you do not carry it through, then, of course, you will not. But otherwise you are going to find a certain demand in English language provinces for a better English education in French, so the kids would have a chance of looking in.

PROF. MEISEL: I would like to raise a problem which is very far-fetched, but let us assume some progress were made in establishing a federal district of some sort, and taking Ottawa and Hull out of their particular provincial berth in some way, and this is a tremendous success, but elsewhere in our national problems we do not do as well and we decide in the end the best solution is to have Quebec secede, and the federal district, the bilingual federal district, would have to be undone presumably since the French part of it would only want to go back to Quebec, and the English part would probably be unrealistically designed with respect to the break-up of Canada.

Now, perhaps the problem is not yet upon



us and one need not spend time thinking about it, but at the same time I suppose we should consider this.

PROF. CREIGHTON: Surely if the country broke up into two little pieces, the small one could follow in its wake.

DR. FORSEY: This occurs if you also decide the Dominion Government should put an awful lot of money into Hull. It may go down the drain and Johnson would say: "Thank you very much; awfully glad to have these buildings in Hull".

PROF. MEISEL: I think there is a serious consequence to the point that I have made, namely, that one probably ought to consider making the changes with respect to the National Capital part of the larger adjustment that would probably have to be made.

PROF. McWHINNEY: I think in a way we are doing that, are we not, because if we were not we perhaps would not be considering the issue at all. If you are dealing with a situation, for example, like the Australian Federal System, you would not have had the federal system until the issue of big-city rivalry between the two big cities was disposed of, because there was a patronage issue, so a capital compromise was a necessary part of setting up the federal system



and taking a constitution like this one.

I take it the only reason for injecting the federal capital territory issue is the disposition to compromise. Otherwise you are simply the political scientist who wants to force through municipal law reforms and says You flog a dead horse once you latch on to something like a capital territory.

I really wondered if this system, in all our committee's work, whether the main objectives cannot be achieved - objectives sought to be realized by a capital territory - could not be achieved by other means, municipal reform, for example. Yet, according to Professor Rowat, Ottawa is undoubtedly a much more attractive city than Toronto or Moscow and, as in a corporation in which some of these bilingual and bicultural problems are independently solved, can we not solve these problems the same way?

As for the issue of nationalism that we were talking about, perhaps in making the capital territory only Ottawa, the English-speaking common law section avoided the legal problem.

You could equally make an argument the other way, why not make Hull the capital territory and city, or part of the capital, and take in part of the buildings? There is no special





reason why we should not have both sides of the river. If you look at the Washington model, it seems inconceivable that they left those portions of Virginia, but they did.

10 I do get the impression, though, from this very thoughtful report of Professor Rowat's - and I touched on this point before - it seems to me your main interest in the problem really is that of a skilled political scientist, a public administrator. It is really not an issue of urban reform, a solution of urban problems on perhaps a more comprehensive basis rather than that of a comparative federalist issue in capital territory as such, and I wonder in this sense is a nationalist element that is supposed to be realized by this plan, and the big one, are people pressing for it and the problem is supposed to be solved by other means involving, if lawyers permit, more moderate controls, less disturbance of existing arrangements - can you not get the same results as well?

MR. STEVENSON: Mr. Chairman, just to add, I wonder if Professor Rowat, in commenting on that, might just give his own personal critique of the Jones report as a method of solving some of the problems of bilingualism and biculturalism by independent action through individual governments?.



PROF. ROWAT: Well, I already commented on that in the report, I think. I think the two main problems with the Jones report is when we did not -- I suppose could not by the terms of reference -- take into account the Hull situation, roughly this part of the metro area as you see on this map (indicating). The other one is that it was simply too far reaching a proposal, I suppose you might say in terms of the uprooting of local governments in the area that would be involved.

PROF. CREIGHTON: Do you mean to say this is such a drastic proposal?

PROF. ROWAT: No, I am not saying that at all. The Jones report was a report designed to solve the problem of metropolitan government in the Ottawa area. Now, the report, I assume today, was addressed to the problem of whether there should be a federal capital territory.

Now, I do not think the Jones report was directed at Ottawa as the capital city. It was directed at Ottawa as a growing metropolitan area and what should be done about it. So that I do not think the two can be compared in that respect. But what I set out to say was that the -- I could even agree with you, I think -- no, I could even disagree with you with respect to the recommendations in the Jones report having to



do with the abolition of the city of Ottawa because the Jones report did propose to abolish the city of Ottawa, made no mention of the fact that it was a capital city or would become the capital of Canada when it was abolished, but Ottawa would be divided up into ten, sort of metropolitan councils of about 30,000 population each, and then there would have been ten others in areas surrounding Ottawa, which would make about twenty councils, and then there would be a metropolitan government sitting on top of them, which would be a highly centralized metropolitan government, much more, say, than the Toronto metropolitan system, because it would have control over the country's local communities. It would levy all taxes, pretty well have supervision over them.

So that in that sense I think it was unrealistic to expect the abolition of the city of Ottawa as one of the main features of the new metropolitan system.

PROF. MEISEL: I would like to protest vigorously against Don's views and the way he put the question. I think he really glossed over something that must not be forgotten, namely, that the structure of government and city serve, surely, an important purpose towards creating certain kinds of life in the area that is being





looked at, and to do a study of the Jones type without keeping in mind the fact that French-speaking and English-speaking people have to live together, I think is overlooking one of the central problems.

It may not be a problem that appears in the organization chart, but it is still a problem of this particular community, and therefore I think we ought to remember that in thinking about these things. We have not only a political problem, as Ted has been saying, but also a politico-sociological problem, and we must look at the point of view of a community.

Again, I simply cannot understand how the planners have moved the railway station. This seems to make sense from the point of view of planning, but for all the people who use railways it seems to me the most insane move anyone could possibly have made. But it made sense because you do not want to cut something up with a bunch of tracks. It is ridiculous; the people who live there have to be taken into account, not the people who make the plans.

MR. SEGUIN: It will be the people who do not live there who will change the situation.

MR. PEARSON: I am afraid my silence would make me appear defensive. I concede you are picking up one of the gaps in all our studies,



even though we are becoming more aware of it. But presently some recommendations are going to the Cabinet and the Prime Minister based on the Jones report, but, within these walls, considerably modified, in terms of the initial steps that might be undertaken on the area.

The other consideration is, I do not know whether the geographic area we are thinking of is really as extended as the area studied, that we have dealt with, even though we would also concede we would have to go over the river for certain metropolitan identities rather than just provincial boundaries.

The other thing, of course, also within these walls, there is a cloud on the horizon that the present question, within a few months, the Cabinet has to make some decision about policy because what happens in the Ottawa area may become guides for the other three areas, and there could be five areas before 1967 is over. But I am very sympathetic to the exercise of this question, the way you are doing it. I think it is much more significant in the long run, what we are doing, in administrative responsibility in the pattern that exists now in Ontario, if out of this session you could come to some conclusions before we get to the point of no return when we start saying what we think should



happen in a municipal sense.

I can not be of much help in terms of where you are going.

PROF. ROWAT: This goes back to a comment John Meisel made earlier that it would be a shame to sort of half solve problems of the area and then find that it made it more difficult to solve them completely by some kind of --

PROF. MEISEL: And already commitments have been made, for instance this establishment of a centre for the Arts in Ottawa. It seems to me that it makes no sense in Ottawa except for the fact that Ottawa is the capital, which is considered in the long run to be a sort of showpiece in the country as a whole.

PROF. McWHINNEY: Does it make sense in Charlottetown?

PROF. MEISEL: I think there has been some sort of commitment made, more than just a metropolitan area. I think this is a problem. I fully sympathize with the point made that the particular department has to work within its own terms of reference, but I think the government has to perhaps in some cases establish inter-departmental committees to deal with these problems, because no one department can actually look at the whole thing. And this is not our business.





But in the case of Ottawa it is not just a metropolitan area, it is a particular metropolitan area; there is none like it in Canada.

PROF. ROWAT: Would you permit me to question Professor McWhinney's comment about Charlottetown? I think it would make sense. I mean, Washington is looked upon as a symbol in the United States and, you know, if people from Charlottetown ever do come to Ottawa and see what is there and what it is like ---

PROF. McWHINNEY: I meant the large centre in Charlottetown, I am sorry.

PROF. CREIGHTON: The large and empty buildings.

PROF. MEISEL: I have always been struck, perhaps wrongly, by the fantastically shortsighted attitude of the civic government in Ottawa. I do not know whether this reflects popular opinion, but in most things in Ottawa one is struck by: the great splendour of federal activity, and some of the buildings, and so on, and the squalor and parochialism in so many aspects of civic government, and I wonder is this a consequence of the federal government doing so much that then the local people simply do not bother to become very involved in their city and there is an atrophy of such civic spirit as may be necessary



to maintain an attractive and local community.

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THE CHAIRMAN: What other cities compare with - ?

PROF. ROWAT: That is what I was going to ask. Is it the contrast that struck you, or is it worse than other cities?

PROF. McWHINNEY: Is it worse than Montreal before Mayor Drapeau, for example?

PROF. FOX: This function of per capita income, and per capita income, I would think that until quite recently is much more -- ?

PROF. MEISEL: The street signs, for instance, a very simple problem. Somebody said, "Could we have some French signs?" and the answer is: "No, the Ontario Government does not authorize these," which you know was wrong. But it also indicated a certain attitude, the turning down of offers of money, you know, this condition of the streets compared with even a benighted place like Kingston.

MR. SEGUIN: You do not pay taxes in Ottawa, I can see that.

DR. FORSEY: One of the curious things in Ottawa I noticed, the Ottawa Transportation Commission signs which fairly recently have all been made bilingual, are now being taken down, the bilingual signs in certain sections, and they are sticking a little thing, route, autobus and



stop number, and then just a little piece of wood with "O.T.C. Bus Stop" on the same pole. Surely it cannot even be an economic matter; they would not be saving any money by carefully taking down signs already printed, and replacing them by others.

MR. STEVENSON: On the question of income, I think Professor Fox really has it upside down; Kingston and Hamilton simply have the highest income.

MR. SEGUIN: We are the poorest of a big city. I mean, I know what we pay for apartment buildings compared with Toronto here and Hamilton and Windsor.

THE CHAIRMAN: Well, if per capita income were a prerequisite of civic duty, then Sault Ste. Marie would be the most ---

PROF. FOX: I would withdraw that remark. That was unfortunate. I should have said tax base. And this induces the attitude that I think John quite rightly described which is one of a sort of penny pinching parochialism typical of Ottawa. I think, as Professor Rowat brings out in his study, it is only very recently that the Federal Government has really given Ottawa anything like a grant the city is entitled to by way of a lack of a tax base.

PROF. ROWAT: It is really since the war.





PROF. MEISEL: For instance, again, the report mentions the difficulty that the Royal Commission on Bilingualism and Biculturalism has in getting any kind of co-operation from city authorities. Officials did not want to play ball with these people, which seems to me to indicate a lack of sensitivity to the realities of life.

PROF. CREIGHTON: What you really want, Mr. Meisel, is to take all the present Ottawans out and put in people you really like who feel sensitive about the thing.

PROF. MEISEL: No, no, I am not a missionary; I would like to reform them.

MR. SEGUIN: We object.

PROF. FOX: Could I raise a general question, Mr. Chairman, about one assumption which I think has not been really adequately questioned by Professor Rowat or some of those involved in the discussion, and that is the assumption, if you have a national capital and you include Hull, say, with the percentages of two major ethnic groups approximately the same, that you would create a bilingual and bicultural situation.

Now, this is an assumption we have made that by digesting the thing mathematically you are going to create a society in which people



speaking both languages, run in and out and intermarry. I do not see any real basis for that assumption. You could have two worlds going on and continue, with fifty per cent each, but unless - what I think is the most important aspect of it, the income base of the respective groups were altered so that there was a social, economic transfer of people and mobility, you would not have any intermingling of society at all. You would have what Rene Levesque referred to as a night civil service and a day civil service, and intermingling would not occur at all. Our problem is much deeper.

PROF. CREIGHTON: I think you need to create a new kind of man.

PROF. FOX: No, I think it involves other things. It involves the creation of instruments in other areas than merely incorporating a larger number of French-Canadians to bring the mix up to an equal split.

PROF. BRADY: I am afraid, of course, that bringing them together would bring conflict and tension, which I think is very unfortunate. In other words, the idea that the federal territory is to be a symbol of a sense of national unity and embracing the two peoples but not create more tension, for example between the people of Hull and the people in what is now Ottawa.



I think it would have a most unfortunate effect upon the relations of English and French.

MR. SEGUIN: I do not think there would be more tension, because half the people of Hull are civil servants already. If it comes to a national capital, all this in white on that green there (indicating) belongs to the Federal Government. Looking at the area in white to the north of the Ottawa River there, that already belongs to the Federal Government. That is what they want to incorporate in their National Capital. All that big park area already belongs to the Federal Government.

PROF. FOX: But Roget, my point is, if you made all this area a Federal Territory, the average person's living conditions in Hull are abominably low compared to ---

MR. SEGUIN: Not the majority, no.

PROF. FOX: Let us say you have spent a vast amount of money, if you are to preserve equity in bringing the Hull area to the comparable level of Ottawa.

MR. SEGUIN: It is the intention, we are told all the time, that the Federal Government will build, whether a national capital or not, in Hull, so I imagine, whether you bring it in or not, they will build in that area.

PROF. FOX: I am thinking of improving





the substandard housing, streets, this kind of stuff.

MR. SEGUIN: We do not have to go that far, to Ottawa.

PROF. FOX: My point is, without this concept of the National Plan, of French-Canadians living in Hull, who are supposed to be citizens of the National Territory --

MR. SEGUIN: To rebuild Hull would cost less than to rebuild substandard housing in Ottawa. You have sections of Ottawa that should be razed completely, half of Eastview, for instance, if it is incorporated.

DR. FORSEY: And I have been impressed every time I have gone through Hull and glimpsed the improvement taking place there in twenty years. Hull has improved almost beyond recognition. I agree there is a lot still --

DEAN LEDERMAN: The Royal Bank building is the only decent building in recent years in downtown Hull.

PROF. McWHINNEY: That calls for more activism on the provincial level. Surely in a balanced House such as you have in Quebec City, I would have thought provincial activism is one more provincial aspect of the improvement in Hull. In other words, this is another problem of how to improve the living standards in Hull,



and that is something that obviously can be solved in part by direct action on the provincial political level, particularly under present conditions.

MR. SEGUIN: I do not think that in the Ottawa-Hull area we are looking at it as improving conditions of Hull that way. I do not think it is improving the conditions of Hull. We know obviously it will improve conditions in Hull but we are not thinking of making a clean sweep of Hull and rebuilding it.

In fact, I was talking to some Quebec people the other day and they said: "Let us hope that if the Federal Government builds in Hull that it will build in unbuilt areas so that the new sections of Hull could be developed before they build in the older areas. The old section will rebuild itself".

12 It probably would help if the Federal Government gave more money, I know that, but nobody is looking at the National Capital with the intention of rebuilding Ottawa and Hull entirely in one day, I can tell you that.

PROF. SYMONS: Mr. Chairman, I read Professor Rowat's report with great interest and appreciation and I find it enormously helpful so far as, unless and until something emerges from the Bi-Bi Commission, and I have also



followed the discussion with the keenest interest this afternoon.

It seems to me a very difficult thing to weigh and to see a clear solution and to have any sureness about what the correct course of action is. We have focussed very much in the discussion this afternoon on the difficulties, and I think that is the way it has to be. One has to look at these things and recognize them, and I admire Professor Rowat's approach.

I do not know, I sense perhaps the drift of his convictions; I felt a very careful statement of the problems in his report in which he was putting before us very fully the problems, the difficulties, and yet always underneath there was some nagging sense of conviction about the need to have vision in this matter.

I think it would be a great pity if in discussions of this problem we become so weighted down with the sense of all the difficulties that there are that we lose sight of the positive aspect of this thing, and that is the concept of a suitable, appropriate arrangement for the location of our National Capital.

I think I feel, as I have talked with people and go a little bit about the country, that there is a very strong wish for some





appreciably different and larger development. The arrangements for our National Capital should be something that will adequately express the kind of country that we are, that we hope to be, something that will serve as a symbol and focus of loyalties and affections for the country. I think it is very important for us, from our various views, and sometimes expert findings, of knowledge, not to lose track of the fact that the country may need some development of imagination and of vision in connection with the arrangements for the National Capital.

I found it awfully hard myself, in listening and reading about it, to have at this point anyway a clear opinion of what is desirable, but I certainly would agree at the very least with the conclusion of Professor Rowat's report that the matter is one of the first importance, and on the one hand certain developments in regard to public opinion might at any time force an entirely new examination of this question. I think the intangibles are on that side.

On the other hand, adverse developments in regard to the nature of our Confederation might require acts of statesmanship of a sort that would centre the development of the kind that we discussed in Professor Rowat's report.

Either way I think one cannot escape



from the wisdom of his recommendations that it is a matter of really high national importance that this subject should be discussed and studied as thoroughly as possible, and really, that we get on with doing it as soon as possible.

One other general comment. I was very interested in Professor Rowat's suggestion that it would be relevant to look at the experience of the city of Washington during their brief period of self-government. I thought this was so, and made a point of looking at it before I heard today's discussion. Unfortunately I did not find it terribly encouraging or helpful in all sorts of ways.

The thing which emerged then very much and might perhaps be a problem is the problem of patronage, and as far as I could understand, the thing which really brought that experiment crashing down was the fact that the government became involved with the banking house of J. Cook, and when Mr. Cook's banking empire collapsed, self-government in the District of Washington went down with it.

So it is not a particularly auspicious example. I was hoping that it might be, but I found it rather discouraging, as a matter of fact.

MR. PERRY: I think on behalf of the



economists, one would have to suggest that in economy jargon one must examine the "opportunity costs" here. For example, would another Trans-Canada (highway) contribute as much to national unity as a refurbished national capital? One could think of other ways of spending money which might have equal importance.

PROF. MEISEL: Is there any way in which economists can answer that question?

MR. PERRY: Give us ten million dollars and half a dozen computers...

THE CHAIRMAN: It is also a very worthy question whether you want the National Capital to remain in Ottawa.

MR. SEGUIN: Well, there would not be anything left in Ottawa after that.

DR. FORSEY: It would become once again a lumber town.

MR. SEGUIN: Without the lumber.

THE CHAIRMAN: The chips fly quite often still.

MR. PERRY: It would become a tourist town adjacent to the night clubs in Hull.

PROF. ROWAT: Mr. Chairman, I would be interested in an alternate proposal that the Federal Capital creates one on the Ottawa side only, and I am wondering whether this is worth further serious study. I rejected it rather





summarily in my own study. I would be interested; to know what Mr. Seguin would think the reaction of French Ontarians would be.

MR. SEGUIN: Well, we are indifferent to that. I told you we would not mind, but I know that the Federal Government would not accept that in view of the fact that about half of the population of Hull, the white collar population, works in the government, and I do not think they would want to abandon them like that. I think they would want to take them in.

PROF. McWHINNEY: What about the other alternative, then, make it on the Hull side, with presumably Parliament Hill - ?

PROF. ROWAT: He has proposed that the new Capital City be located in the Gatineau Hills, which he thought would be very beautiful.

MR. PERRY: Perhaps an easier solution would be just to reverse the names of the two cities...

PROF. McWHINNEY: There is no special problem in having the Federal Government buildings in another city or province; that situation is in all federal systems, I take it, symbolical. You would want Parliament House along if you made Hull the capital territory, but there is no special reason you would not go north or south of the river. You would solve these problems



of mixed legal systems surely.

MR. SEGUIN: I do not think you would solve much by that, by putting the capital in Hull.

MR. STEVENSON: Mr. Chairman, in his report, Professor Rowat mentioned several times that one of his objections was the possibility of the Quebec government not acceding to a request that the City of Hull become a part of the capital region, nor did he say the Ontario Government might be an obstacle. I wonder if Professor Rowat has any particular reactions from the Quebec Government or from the Ontario Government as to the Ottawa area?

PROF. ROWAT: What I was doing was reporting the arguments used, traditional in literature since Confederation, and this one you heard. Ontario, from the point of view of giving up the territory, has far more at stake than Quebec, because most of the population is on the south side of the river, it is quite true, and I have read this as an argument in favour of a Federal Territory. Most of these arguments about Quebec are by some French-speaking Canadians who say: "Well, after all, this argument does not hold much water because Quebec would have far less to give up than Ontario".

DEAN LEDERMAN: Well, I think the



proposal that Quebec should give up something too should be valuable in one way; it would test the bona fides or the intentions of the government of the day in Quebec to stay in the Confederation.

PROF. ROWAT: Well, this goes back to the point Tom was making, really. This is an act of faith in Confederation, if you look at it in an imaginative way.

PROF. McWHINNEY: And how much a national capital territory is a positive symbol, it may be that the Government of Quebec will give it a low priority, which would be an interesting reaction.

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DEAN LEDERMAN: It would be interesting to see what they would do.

PROF. McWHINNEY: Yes. John just suggested they might pick up Mr. Perry's Trans-Canada highway as a higher priority.

THE CHAIRMAN: They might give low priority. Once you concede the question of the National Capital District, you presumably reduce some of the practical power.

PROF. McWHINNEY: Except our assumption here, made on the basis that the Government of Quebec still gives the highest priority perhaps to symbols and things like biculturalism, and my argument to that, of course, is that Mr. Johnson gives the highest priority -





MR. STEVENSON: Mr. Chairman, another point I heard brought up recently is that the National Capital Territory, based on the concept of a completely bilingual territory, would in effect strengthen the voices in Quebec looking to an associate state in that here you have a recognition of a two nation concept. I do not subscribe to this, but I wonder if anybody would have any comment on this kind of argument, which I heard for the first time within the last few days.

PROF. MEISEL: How does the argument run? I do not get it.

THE CHAIRMAN: Well, it would be a much more explicit recognition of the two cultures than has been manifest before.

PROF. McWHINNEY: I do not know how, in a practical, political sense, it could be expected to give momentum to the movement.

DEAN LEDERMAN: Surely what would be done would be to strengthen the hand of the Federal Government and the Federal Parliament.

PROF. SYMONS: I think it might just possibly have a peripheral effect if it resulted in lessening of the movement to appropriate biculturalism and bilingualism on a provincial basis. For example, we talked about its possible adverse effect on the Franco-Ontarian



community, and it could have a total effect on the Province of Ontario, which I think pretty clearly is moving over a period of time towards bilingualism and biculturalism in certain appropriate areas. It could stop this dead, and thereby the price paid for a bilingual and bicultural national capital would be too high a price.

DR. FORSEY: Should we not ask our friends in the middle of January if they are honest about this, about the Quebec view?

THE CHAIRMAN: I would think most definitely.

PROF. McWHINNEY: That will be fascinating really, because it would be common to the two.

THE CHAIRMAN: Tom, I would like to return to your point. I am not sure I have it properly. Is this the question that Mr. Seguin was raising earlier, that the danger of the alienation of the rest of the Franco-Ontarian community and also the momentum that exists could exist in other parts of the province?

PROF. SYMONS: Yes, I think his assessment is right. As a matter of fact, numerically the French language population in metropolitan Ottawa is a very large proportion of the Franco-Ontario community. In terms of



the position that they occupy in the province, their influence is way beyond their numbers, and if you extract this element of Franco-Ontario population from Ontario, the movement towards bilingualism in certain areas in the province could be really cut right down, and this might have an unfortunate effect in the Province of Quebec. They would say: "Well, that is what bilingualism and biculturalism is going to mean if we get a National Capital Commission," and we could play into the hands of the Separatists.

PROF. MEISEL: Mr. Chairman, I think this point is well worth making, and once one makes it, one is likely to be on guard, and I think, provided we know what we are doing in Ontario, this need not follow at all, so we just have to remember it.

PROF. ROWAT: Well, this modern feeling, that is, the change of civil servants, is putting greater and greater emphasis for bilingual education on people who want to get into the Federal Government.

PROF. FOX: Mr. Chairman, I am still not convinced about the validity of the argument that the creation of a Federal Capital which was more evenly balanced would actually result in greater rapport with the nation at large or even within the Federal Capital.





On the basis of that argument you might make the capital Kapuskasing, where the population is more evenly balanced. But I think the town of Kapuskasing shows these two worlds existing quite separately, and simply by creating a situation where there is more equal distribution in numbers does not lead to a solution of the problem which we appear to be discussing here. And that is why I think this is a separate problem that deserves the consideration of the Bi-Bi and other groups, but not primarily a problem of Ontario, it seems to me, because there are other aspects to it.

PROF. MEISEL: Mr. Fox is quite right. I do not think a great deal do after this now. I further submit that this Committee, particularly with Paul Fox's point in mind, should wait before it finally makes its decision, until it has had a chance to look at what the Bi-Bi Commission has to say about this, because I know they have been and are concerned very much with this problem, and I think there are a number of things they are working on which are designed to forestall this kind of development.

PROF. ROWAT: They may develop information on the attitudes of the people in the area.

PROF. MEISEL: Having 45 per cent of



the population French-speaking and the other English-speaking does not necessarily mean they will get along together or that there will be any kind of communication between them. You have to, for instance, to be sure in terms of neighbourhood, you do not just have to reach the top civil service rung living in one quarter, French-speaking civil servants living in a ghetto of their own.

But I think a lot of this is something that is settled within the private sector, but government can give certain stimuli to these things in terms of having departmental facilities located in different regions of the area, and so on.

PROF. ROWAT: Well, Mr. Chairman, I think of all the arguments advanced so far, I am most impressed with this one. This is the one Professor Brady started off and Paul Fox brought up, that it is tied to the other aspect of it as to how much local self-government you leave in the area. Now, the Ontario Government, the Quebec Government and the Federal Government, with the best will in the world, may go into this and say they are creating a symbol for Canada. They grant local self-government and then the thing falls apart and the local residents are fighting one another, and this does not turn



out to be the co-operative thing you thought it was going to be. For a person like myself, who is a great supporter of local self-government, this is a very worrying thing.

The thing to do would be to just impose everything by agreement between the Federal Government and the provinces and say: "This is the way it is going to be in the Federal Territory, the educational system is going to be reformed and we do not care whether the local citizens like it or not".

PROF. McWHINNEY: To forget about racial balance and simply say: "If we want to have a symbol, the least expensive way in terms of expenditure offered is to take one area, one legal system, like Ontario, and simply make sure people come in and get public schools and so on".

I have been reading this latest Hungarian study of the nationality issue in the Austro-Hungarian empire, and I suppose you would get these mixtures in that study, but they are making the same points Paul did, the economic gaps between the communities are determined by racial criteria. So it was more significant than the racial, linguistic one.

THE CHAIRMAN: This, I take it, is the Kapuskasing situation?

PROF. FOX: I think the Kapuskasing





situation is a bit different. I have not made a study of it. My impression was that the total social situation is higher than the Ottawa-Hull situation because you have virtually full employment. So it becomes really a problem of social values, how you want to spend an adequate income and where you want to live, and going out with people of the other group.

But I think the Ottawa situation may have changed recently. Where I lived a number of years, if you had the local government that Don was talking about, I could visualize immediately an equal number of French councillors starting to talk about slum clearance, and all the money going to where the French-Canadian lives, and immediately the English-Canadian councillors are adverse to this. This is the type of problem that you would get.

PROF. CREIGHTON: Mr. Seguin did not want us to concentrate on Hull.

DEAN LEDERMAN: With the Federal Treasury, you could buy yourself out of this problem.

PROF. ROWAT: I agree with Dean Lederman that a lot of these problems could be solved with money. Look what the Federal Government is doing now to overcome this difficulty, pouring money into the area.



PROF. FOX: I thought that was an interesting thing that came out of your study, that there was no co-operation really amongst governments until the Federal Government let go the purse strings and started to pour in money, and then you got co-operation and development. But this implies that there would be a great deal of federal money spent, and I can then see peripheral problems, people in Ontario here spending so much money on the National Capital.

PROF. MEISEL: I think it is the same point we reach every third Friday of each month, we confront a great many problems, and they are terribly difficult problems. Either we are going to spend a great deal of money and risk a great deal in trying to solve them, or we might just as well give up. I think the alternatives are to let the thing run off the rails or to try to do something at the risk of wasting a lot.

And there is also a feeling in my mind that we have got to make a risk, we have got to spend money. Either Canada is worth preserving or it is not.

THE CHAIRMAN: You just advised us a moment ago to wait for the results of the Bi-Bi. I am not sure we can wait that long.

DR. FORSEY: We may be faced with specific proposals or may want to make specific



proposals. I think one thing we have got to remember - and this has been brought up several times and I think it is worth emphasizing again - we have got to remember that this thing of itself is not going to do a terrible lot. It would have to be a part of the general solution or, to use a popular term, a package, and there is a whole string of things that have to be done. The question is, is this a significantly useful part of any package? Perhaps it is, perhaps it is not.

PROF. McWHINNEY: I think there is that difference between this and the other. Some of the problems are presented as immediate political problems. I am not sure this follows from the general proposition of holding Confederation together, that this is a necessary and inevitable instrument of doing it.

PROF. MEISEL: I think it is only part of this. It is not the central one, but it is an important one.

PROF. McWHINNEY: I am just wondering where the approach should come. On the Quebec scene nobody is asking for a Federal Capital Territory, whereas people are asking the Supreme Court and the Senate and all the way down the line. Is this sort of an Ontario response to what it feels should be a Quebec demand?





DR.FORSEY: Not entirely. Look at Sauve, for example. I think Sauve probably speaks for some French-Canadians besides himself.

PROF. MEISEL: Not always.

PROF. ROWAT: Another point, Professor McWhinney referred to the study in which I did a review, a brief provided the Royal Commission on Bilingualism and Biculturalism. A great majority came from Quebec. This is entirely new in any federal territory.

PROF. McWHINNEY: I sat in Toronto just before I presented my own brief, because it was a fascinating experience, and I heard a number of people at this thing, and it was Mr. Marchand who caught them all the time. He said what law would apply, and of course this was something they had not considered.

I would respect your own assessment of the weight, the intellectual weight, the political weight of the recommendations from Quebec, but in some cases I would not necessarily say the number of people proposing would be significant.

If you tell me, for example, St. Jean Baptiste, somebody like that, a pressure group, were pressing it, I would accept them, not that this is important, but are you sure that significant interested groups are pressing this?



MR. STEVENSON: Mr. Chairman, I think you and I certainly have been the object of several rather impassioned appeals from senior Quebec civil servants. If the Ontario Government has in real measure anything to contribute to these problems, it has to be in the Ottawa area. Whether it is done strictly within the frame of reference of the Ottawa area under provincial jurisdiction or whether it is under the National Capital Territory idea is another question. But this has certainly been the point of very strong concern by people in the Quebec Government.

PROF. McWHINNEY: I know an Ontario law student asked me about this and said: "Do you think there is any harm in putting it in a brief?" and I said: "no harm at all". But this obviously is a much broader issue.

PROF. MEISEL: It seems to me it is an important area. When I said that we should wait for the Bi-Bi Commission material, I did not mean we should stop thinking about this altogether. Don Rowat has suggested a series of pretty serious studies to be undertaken, and I think it is right. There have been problems raised today, some of them economic, some of them political, some sociological, which we ought to look at, but I think before we make up our minds we should have available some additional



information that will help us deal with the problem that Paul and Professor Brady raised.

PROF. McWHINNEY: Are you interested in doing a study on the comparative National Capital Territory? For example, does it follow through in terms of legal details and the Australian-Mexican-Washington case, that obviously would have to be made if anybody went into the business of legislating such a territory?

PROF. ROWAT: This is what I am doing now, and I am going to pursue this subject.

THE CHAIRMAN: Tea and coffee are being served. Do you wish to continue the discussion of this question after break, or do you want to return to other matters before we conclude?

PROF. BRADY: I think, Mr. Chairman, it would be wise to have a look at the agenda of the next meeting, unless you wish to leave that to the policy sub-committee.

THE CHAIRMAN: There are two alternatives here. I do not know how far the other committees went in dealing with the proposed agenda for this meeting in January of the Quebec people, but we could certainly deal with it today. We might possibly deal with it more expeditiously in the sub-committee. I think, in either event, we have to deal with it fairly quickly if we are





going to get the agenda to the people well in advance of the date. I have no preference.

DEAN LEDERMAN: We all proposed to redraft four constitutional questions.

THE CHAIRMAN: Well, it seems as if we had the material to deal with.

PROF. CREIGHTON: I cannot sit much longer, Mr. Chairman.

DR.FORSEY: Let us bring our coffee and tea over.

PROF. ROWAT: May I just make a concluding comment about our discussion, and from what John was saying, and that is: I do not know whether it was in the mind of the Committee from the beginning when this study was first thought of and requested, but it seems to me that if the proposal for a Federal Territory is to come from anyone, or even a proposal to study it thoroughly, the logical place for it to come from would be from the Government of Ontario, because if the Federal Government initiated this study, I think the reaction from the Province of Quebec would be less desirable.

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PROF.McWHINNEY: It got a very favourable reaction in Montreal.

PROF. ROWAT: The other comment I wanted to make is, I told the Chairman, I think at the time I concluded the study, that it seems



to me very important to do a comparative study of the Federal Capitals elsewhere, and this I thought was the big gap in my own study and I offered to continue to do a study of this kind if the Committee thought it was desirable. So I am still willing to do that.

PROF. McWHINNEY: I think it would be very helpful in general.

THE CHAIRMAN: Well, I think we will certainly be giving our attention to that offer, Don, and I think we need not presume on you further today, if you have to get along. I would like to thank you very much indeed on behalf of all of us for this presentation. We will certainly be discussing this.

DR. FORSEY: I think it would be highly appropriate to give a further word of thanks to Professor Rowat, because he might go away with the feeling that we had been picking holes in this and raising difficulties, whereas I think he has done a most valuable piece of work. I agree that there are questions that we raised, but I think this is a most valuable report, for which he deserves our warmest thanks.

MEMBERS: Hear! Hear!

--- A short recess

THE CHAIRMAN: Well, we have the



question now to consider, I suppose, about where we go from here with that particular study and that particular topic, which I suppose our sub-committee will want to consider in detail.

PROF. FOX: Now, you mean?

THE CHAIRMAN: I am just putting it as a matter of notice. This is also, I think, going to raise the general question that we have been discussing without ever deciding, and that is, which studies, if any, we want to make public, and the particular background studies. As I recall, we were more apprehensive about this than the Prime Minister.

PROF. MEISEL: I thought we settled it once and for all, did we not?

THE CHAIRMAN: Well, which way?

PROF. MEISEL: Well, did we not think there should be no publication? I thought we decided that if we published anything, then there would be awkward questions asked about the things we did not publish.

THE CHAIRMAN: I think the question was raised after; you were not here, John.

PROF. FOX: Don Rowat raised the question with me while you were out there about it too, and I suggested he talk to you. I explained part of our difficulty. He made the comment that it might be possible to publish





commissioned studies rather than studies by members of the group, and I just threw that in.

PROF. MEISEL: Fair enough, but you may get a study you do not want to publish, then be accused of holding something back.

PROF. FOX: Certainly if we wanted to publish something, this would be innocuous.

THE CHAIRMAN: You might solve people probing at us for all time.

DR. FORSEY: It seems to me if you publish this thing now, with all the brouhaha that there has been about it, it might be taken to involve both this Committee and the Government more than in fact it should, unless the thing is made abundantly clear. It would have to be well explained.

PROF. MEISEL: One could, I suppose, cover one's self by saying that a good deal of information about this study had leaked to the Press which was being released as a report of one individual for whom the Committee bears no responsibility or for whose views --

THE CHAIRMAN: You might explain it all you want, but it would not necessarily find its way into the newspapers. When I was asked yesterday morning if this study had been commissioned by the Ontario Government or had contained any recommendations on the form of the



Federal District, I told the chap that it was not true that this study was commissioned by the Ontario Government, it was a background study asked for by the Ontario Advisory Committee on Confederation. It was a very different thing. But the answer came out that is not true, that Dr. Rowat recommended any form of a Federal District. At the same time he said that there was no intention at present to make the study public.

DR. FORSEY: I saw somewhere in one of the newspaper reports it was not the Ontario Government that commissioned this Committee. That was in somewhere ---

PROF. FOX: The Globe.

THE CHAIRMAN: But you see, here is a C.P. report carried on the front page of the Journal which precipitated all this:

"With little publicity the Ontario  
 "Government has commissioned a  
 "detailed report on the pros and  
 "cons of a federal district in  
 "the National Capital area. The  
 "report is expected to be made  
 "public shortly and is understood  
 "to endorse the proposal so long  
 "as some sort of home rule is  
 "obtained for the local taxpayers.



"Premier John Robarts is taking a  
"personal interest in the question,  
"informants said."

He may well be taking an interest  
before too long, if the reports keep circulating.

DR.FORSEY: It makes me wonder about  
making it public. Are you going, then, to be  
put in a position every time some journalist  
comes along and says: "I understand such and  
such is to be published", surely we are going --

THE CHAIRMAN: My answer to the  
question "Was it to be made public?" was, "No".  
"Were recommendations made by the Committee?"  
I just steered off answering that question by  
saying: "Well, this was an assessment of the  
arguments for and against, that was all".

PROF. MEISEL: I suggest we do nothing.

DR. FORSEY: I think we had better  
do nothing. Rowat is a free agent, he can express  
his own views. He has already made a speech.

THE CHAIRMAN: He does not have to  
release this report in order to have his point  
of view heard.

PROF. FOX: He just wants to know  
what to do, that is all.

THE CHAIRMAN: And I think he is quite  
free, and agreed to speak and write.

DR. FORSEY: He did so apparently some





time ago.

PROF. SYMONS: I think that is a happy solution, Mr. Chairman.

THE CHAIRMAN: That is a characteristic solution.

DR. FORSEY: We do not want to be put in a situation where we are bulldozed by these newspapers into publishing things.

PROF. FOX: Don Rowat is the chief exponent of secrecy.

DEAN LEDERMAN: It may be, Mr. Chairman, we should in some of the studies done for us and some of the things that we do, take a more public posture, and I think that question, whether we do or whether we should do that, or how we do it, has been put to the Prime Minister, and he is thinking it over, and if and when we do, we do it according to our plan, not according to the Ottawa Journal.

THE CHAIRMAN: Oh, yes, of course, a slight problem of this question of the Committee, he said two or three times both in the Legislature and in public that thought was being given to making some of the studies of the Committee available and he said to us that he sees no problem about this in some cases, but the mood of the Committee has been to not make things public.

PROF. MEISEL: I remember a meeting at the Park Plaza with several Cabinet Ministers where



all the politicians were for publishing everything, and all the academics said "Do not publish anything".

DEAN LEDERMAN: Yes, there was quite a discussion that day. I think myself if we start to get into the public area, then what we have to reveal to the public is a variety of things that do manifest themselves in this Committee, and there is safety in the variety. The Premier can take refuge in it; a member of Parliament can say to him: "Well, why did you not take the advice of Professor Jones?", he can say "Professor Brown has given me different advice and I am thinking this over."

PROF. FOX: "And I desire to fire both of them".

DEAN LEDERMAN: I think there is a danger in releasing little bits of it because this might give the impression that there is a sort of second Cabinet operating here that really is not operating at all.

THE CHAIRMAN: Let us not tarry on this because I think it is more important to look at the question of the Quebec meeting.

The first question, I think, is perhaps the order with which we should tackle the questions, the broad questions, at the three plenary sessions. We have had some discussion about this in our economic and fiscal committee, and we felt that



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probably since there is a problem at all, it originates in the cultural field, we should have it at the opening session, which would open up many of the problems on cultural, perhaps the second session on economic and fiscal, and the final session on the constitutional, and what cannot be tackled by cultural, economic or financial means, would then remain for consideration as a more basic constitutional problem. What about the other committees? How does this go with you, Bill?

DEAN LEDERMAN: We did not discuss the order of things, but my own personal reaction to that proposal is that it is the proper order, particularly since this is an interprovincial meeting, so to speak, so the federal-provincial constitutions are somewhat in the background and the cultural, economic and fiscal somewhat in the foreground.

So I would agree with the order we have and recommend for the constitutional questions, which I can either leave to this Committee or leave to the policy ---

THE CHAIRMAN: Well, what about the cultural group, Mr. Brady?

PROF. BRADY: The cultural group actually agreed with the economic in that recommendation. Cultural, economic and it also examined and revised





the agenda into cultural sections.

THE CHAIRMAN: Well, may we take it as agreed that this would be the order, cultural, economic and constitutional? Very well.

Then we had proposals put forward about the Chairmen of each of these sessions in turn. Was that circulated, Don, in the material?

MR. STEVENSON: No, it was not. I think, until it was discussed today, no one was notified. We did discuss it in the cultural sub-committee this morning.

THE CHAIRMAN: Well, the recommendations for Chairmen of the three sessions came from the research policy sub-committee, and they have proposals to put before you that the following be invited to be Chairmen of the sessions - Don, do you want to report that?

MR. STEVENSON: The three suggestions were:

President - Symons, for the first session on the cultural;

Marcel Belanger - for the session on the economic and fiscal questions; and

Dean Lederman for the constitutional.

Unfortunately, although many of the people from Quebec have now replied definitely to Queens that they will be there, so far Marcel Belanger is not one of them. We were thinking, if the Committee agreed to this, that he should be contacted as soon



as it is apparent that he wishes to attend.

THE CHAIRMAN: Or we might even write to him saying would he care to perform that role, unless that discourages him.

PROF. MEISEL: That may discourage him.

PROF. BRADY: Would there be any advantage in contacting Mr. Morin, having Mr. Morin?

MR. BEER: Mr. Chairman, I will be talking with Mr. Burns again tomorrow and possibly Mr. Morin. When I spoke to him before, he said that he had contact, that everything seemed fine, and it is quite possible that Marcel Belanger has already spoken to Mr. Morin, because they are in Quebec City and his letter was just held up in the mail. I can find out more on that tomorrow.

THE CHAIRMAN: Charles Beer, by the way, is our Conference Secretary, and is looking after the arrangements with Mr. Burns.

Well, do those suggestions commend themselves to you?

PROF. FOX: Splendid choices.

THE CHAIRMAN: Now, the next question then, is the agenda. I think we might just briefly review the questions suggested by each of the committees. We may not be able to resolve all of the subtleties of these today, but can I get a general feeling or reaction from you and perhaps tidy them up in the research policy sub-committee.



Bill, would you like to begin, then?

DEAN LEDERMAN: We composed four questions, and the object of these questions is to say enough to provide a framework for discussion. They are a little more extensive than the question on the original sheet here.

Our first question was this - I will just read the four of them all at once, if I may, so that you will have the whole picture before we discuss them.

"Should Canadians be satisfied with the  
"constitutional status quo?

"(a) If we accept the notion of  
"constitutional change, how is this to  
"affect the organic growth of the  
"judicial, constitutional amending  
"formula and the constituent assembly?  
"In what respect should the amending  
"formula be flexible and in what respect  
"rigid?

"(b) If there were to be a constituent  
"assembly, how would it be constituted  
"with respect to the whole issue of  
"constitutional change, and if you want  
"it, how do you go about it?

"2. Are you satisfied with the present  
"federal institutions, the Crown, House  
"of Commons, Senate, Cabinet, Supreme





"Court? If not, what changes are  
 "desirable? What are the implications  
 "for these institutions of a particular  
 "constitutional status for Quebec?

"3. Should we be satisfied with the  
 "present division of legislative powers?  
 "If not, should more powers be given the  
 "Federal Parliament or the provincial  
 "Legislature?

"4. Should the provinces have an  
 "independent role to play in international  
 "relations?"

So this goes from the constitutional status quo and the methods of change to the institutions of the Federal Government and the impact on them of a particular constitutional status of Quebec. From that specifically to the division of legislative powers, and then from that to the question of international relations. That is the rationale of these questions.

Almost anything anybody wants to speak about can be raised under one or other of these questions, but I think they give sufficient guidance that they will focus the discussion and yet permit almost anything to come up under one or the other.

THE CHAIRMAN: Any commentary there?

PROF. FOX: I think it is a very good



presentation. The only suggestion that I would make is the one we considered in the cultural sub-committee, and it is a general comment, and that is that instead of phrasing questions for the agenda in a sort of naive way: "Should we do so and so or should we not?" we might put them in as almost flat phrases such as : "The constitutional status quo. Do we require a change?".

I am just suggesting it, Bill, for the group's direction. This, then, removes any sort of loaded element in a question either way. Now, I only offer that as a comment, in passing, and it may not be satisfactory, but we found it was useful in our sub-committee.

For example, number 3 would become merely the phrase: "Present distribution of legislative powers", and these would all be listed as questions for discussion. I do not think the phrasing or the terminology is important. It is just a question of whether you really want to put them as a question or whether you want to put them as topics.

DEAN LEDERMAN: On the third question: "Should we be satisfied with the present division of legislative powers? If not, should more powers be given the Federal Parliament or the provincial Legislature?". Now, I appreciate the merit of this proposal, but how would it come out here, say:



"Present division of legislative power"? Should we say more be given to --?

PROF. FOX: Well, you could put: Possible alterations, pro and con, of the Federal Government.

DEAN LEDERMAN: Well, it could be reworded in that way, and it might be better for the agenda.

DR.FORSEY: Well, I think our way of putting it would be better, myself. This is what we mean. Why not say so? And it may be nice to have a little variety. The cultural sub-committee may put it one way; we want to put it another way. Various voices, one --

PROF. FOX: You will note that I merely offered it as a suggestion. I am quite happy.

THE CHAIRMAN: Are you generally agreed on that?

Let us go to the economy then. Would you like to read this little piece?

MR. PERRY: This is written for us by Peter Venton. Mr. Reporter, you need not take this down; I can give you this afterwards.

"The members of the sub-committee felt  
"that the questions should be asked within  
"a framework which runs roughly as  
"follows. What expanded jurisdiction  
"does a province need to solve its





"regional problems and will that expanded  
"jurisdiction be detrimental to the  
"national interest in Canada? In  
"addition there remains a problem of  
"what economic means can be taken to  
"ensure the survival of the French-  
"Canadian language and culture.

"Ontario is particularly concerned  
"with achieving a high rate of economic  
"growth and the policies necessary to  
"attain it. It is the wealthiest  
"province in Canada and is concerned not  
"only with what areas of jurisdiction it  
"needs to stimulate economic growth and  
"maintain stability, but it is concerned  
"about how its policies will impinge  
"upon the Federal Government's monetary  
"and fiscal contracyclical policies and  
"the objective of providing provincial  
"governments with the necessary funds to  
"achieve certain minimum standards of  
"services across Canada. The members  
"feel, for example, that the expenditure  
"responsibilities which the provinces  
"already have, impinge on the federal  
"Government's contracyclical fiscal policy.  
"This brings up the question of whether  
"the provinces should have some



"responsibility for fiscal and monetary  
"policies.

"It is stated as an assumption that  
"Quebec needs wider economic powers than  
"the other provinces in order to ensure  
"the survival of the French language and  
"culture. What broader economic powers  
"do they believe to be necessary for this?

"Is the Quebec Government's lack  
"of control of the economic development of  
"that province consistent with its desires  
"to ensure the survival of the French-  
"Canadian culture and language?  
"Specifically, is Quebec's encouragement of  
"American investment in that province  
"consistent with its desire to ensure the  
"survival of French-Canadian culture?"

The last paragraph is about the order.

I think it is apparent from this, the  
setting we were trying to give, basically what are  
the economic implications of the kinds of things  
that Quebec wants to do to achieve its cultural  
and language aspirations, and we brought in Ontario  
specifically to show that there are other sets of  
aspirations.

Ontario, being the economic heartland  
of the country, would, of course, be interested in  
policies which maintain the economic growth, and



therefore may have a different view about some of the things that Quebec wants or some of the things that the Federal Government should be doing. I do not think this quite yet seems the wording that we would want, but it is getting closer.

THE CHAIRMAN: No, we would want to tighten this up, but it shows the drift of the conversation. There is also running through this the question that on the economic front many of the problems which are here now are problems of a federal-provincial nature in Canada, and that these are by no means unique to Quebec, and that unique problems have to be grappled with in a wider context than just the cultural and language situation. As examples of that there is the added point about original indifferences.

MR. STEVENSON: Mr. Chairman, if one is trying to boil this down to be a little more consistent with the sets of topics or questions used by the other two committees, is there any preference as to how this should be done? I think perhaps this lends itself better to the way the cultural sub-committee phrased its question, where you had a topic, and place perhaps a sub-heading under it. I think it would be helpful in later re-drafting to get an expression on that.

THE CHAIRMAN: You mean have a descriptive





as opposed to a direct question?

MR. STEVENSON: Yes.

DR. FORSEY: Can you not leave that to the research policy sub-committee? It is a matter of drafting; surely the points raised by the economic sub-committee would appear to be quite satisfactory.

MR. PERRY: I think it is a matter of getting the right words to convey the message.

PROF. SYMONS: Agreed, if the research policy sub-committee would be kind enough to do it.

PROF. BRADY: I think the secretary has been drafting these questions and then submitting them to the policy committee.

PROF. FOX: I am beginning to wonder if we need a meeting of the research policy sub-committee. I suppose we will.

PROF. MEISEL: There will still be lots of detail.

THE CHAIRMAN: Well, we could get the secretariat to put these in shape and send them out to you in the mail asking for your comments - I mean the comments of the sub-committee.

MR. BEER: Mr. Chairman, I was thinking, as far as anything going in the mail is concerned, we would want to have all these out to all the people coming to the meeting, I would think, next week, would we not?



THE CHAIRMAN: Well, it does not leave you much time.

DR.FORSEY: Well, how many people are on that research policy sub-committee?

THE CHAIRMAN: Four, in addition to myself. Five altogether.

DR. FORSEY: Surely it is not too difficult, if necessary, even to talk to them. Most of them are in Toronto, are they not?

THE CHAIRMAN: All except Professor McIvor.

DR. FORSEY: Call him on the telephone, because the mails now are all clogged up.

THE CHAIRMAN: We had better try to make some kind of direct contact here after the secretariat has put this into shape.

DR. FORSEY: He can come up here in an hour. Getting a meeting of the sub-committee surely is not such a vast enterprise.

THE CHAIRMAN: It is a question of time, the year and the season.

DR.FORSEY: Yes, I know. Even so --

PROF. BRADY: It should be better for the secretary to work on them.

DR.FORSEY: Yes, having got them, and call McIvor on the telephone and say: "Look, how is this?". He would probably say: "Well, I think you might put in the word 'x' or take out the word 'y'



or something of that sort". I do not think there is any vast issue of principle here. It might be just as well for them to say "That looks fairly neat and tidy. No, it would look better if you polished it up".

One question I want to raise, Mr. Chairman, if this question to be added on the sheet here about cultural matters is going to remain in that form, or even if it is not, somebody ought to be briefing himself on exactly what rights and privileges the English-speaking Canadians living in Quebec are enjoying, or else ought to be briefing himself on how to ask that question, because it seems to me there are three different kinds of things involved. There are certain rights which the English-speaking Canadians in Quebec have under the British North America Act. They are extremely limited. There are certain rights which they have, probably, under Quebec legislation which could be changed by the Quebec Legislature, and there may be certain rights they enjoy as a matter of administrative arrangement or regulation.

There may also be certain things, certain privileges, they enjoy simply by outside agreement which may even contravene certain regulations. This sort of thing is known to have happened elsewhere, at all events.

And I think we ought to know enough about





these things, whether Franco-Ontarians have the same rights and privileges as English-speaking Canadians living in Quebec. For instance, it might be widely assumed that English-speaking Canadians living in Quebec have the right to an English education. They have not. I mean, not a right guaranteed in the British North America Act. From now on, in any Protestant school, everything is to be done in French. That would be it. And if they wanted, in the Roman Catholic schools everything would be done in French. That would be it.

And I understand English-speaking Roman Catholics in Quebec are already getting nervous lest they squash them into the end of the French section of the Roman Catholic schools and say: "Well, boys, you are out".

THE CHAIRMAN: Perhaps Dr. Brady could report here now, and this might clarify it.

18 PROF. BRADY: We modified the content of the agenda under the cultural into three divisions:

(1) The position of the French-speaking Canadians in Ontario in education and culture,

(2) The position of the French language in Ontario in regard to education, courts, municipal affairs, provincial government agencies and departments and,



(3) The division of powers between the federal and provincial governments on education, cultural affairs, and research.

And below that, that is a general topic, the possibility of an interprovincial organization instead of direct federal intervention, the difference of views between Quebec and Ontario representatives. Now, that is merely a statement of the topics, and the questions, as it were, would be raised by whoever was introducing them.

THE CHAIRMAN: Is that all right?

DR. FORSEY: Well, if I am not sure, I should be sure to ask certain questions. I must run, Mr. Chairman.

THE CHAIRMAN: Well, I think we have covered things pretty well. Now, are there any other suggestions or questions about other matters?

PROF. FOX: I have a suggestion that we should have the day and a half session concluded by a brief summary from each of the two groups on some sort of up-beat note that might not prevail after lengthy discussion on constitutional matters. I thought we might become too deeply embedded on mechanics and things. I just felt it would be psychologically better to have a couple of people primed to say something that would perhaps send us away on a brighter note than we might otherwise have.

I suggested this to the cultural sub-



committee, and they thought it was a good idea and proposed that we might have someone suggest Claude Ryan say something on behalf of the French people and Ian Macdonald would be the appropriate person to sum it up, and away we go. While I suppose other names could be suggested, these were two that we thought were most appropriate.

THE CHAIRMAN: Well, are there any -- ?

MR. PERRY: Just one minor point which may have been made clear in the letter, but I can not recall it: Are they housing us on the university grounds there or should we make --?

DEAN LEDERMAN: There is a block of 35 rooms reserved in the Town House Motor Hotel.

THE CHAIRMAN: I think most of the people from Toronto - my own plan is to take the afternoon train down on the Friday, I think 4.30, the Rapido.

MR. BEER: There will be taxis there. Professor Burns asked me to mention that if there are people who have not as yet officially replied, if somebody has not replied, perhaps they could get it off before Christmas.

PROF. FOX: May I ask if you are housing the Queens people at the hotel?

MR. BEER: No.

--- Discussion re Kingston meeting





THE CHAIRMAN: Well, I think we can round out the final session, as you suggested, Paul, if that meets with everybody's approval. That is fine.

MR. STEVENSON: The cultural sub-committee did talk quite a bit about finding people in particular subject areas to lead off the discussions. Did the other committees do the same? Because there was a feeling that not only the Chairman but also some other people in that group should be prepared on certain aspects of these questions.

PROF. FOX: That might have been particularly significant for the cultural area because we felt that a couple of people be prepared with some facts and figures on what is done in terms of French education in Ontario on a nationality basis.

THE CHAIRMAN: Yes, I would perhaps draw a distinction between priming, which I do not think is necessary in this group, and having some factual information which might be useful. I think we should go armed to demonstrate as much as we can.

Very good, then.

MR. BEER: Just one more point about the meeting. We hope we would be able to get off to all people next week the arrangements on transportation and what-not and let you know it, and the facilities and so on, so that you can be



looking for that.in the first week in January.

--- Further discussion re transportation and  
accommodation.

--- The meeting concluded at 5.10 p.m.

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